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U. S. Dept. of State.

PAPERS

RELATING TO

BEHRING SEA FISHERIES



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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No. 1.

*Marquis of Salisbury to Sir L. S. Sackville West.**

FOREIGN OFFICE,

September 10, 1887.

SIR:

By a despatch of the 30th October last (No. 214) the late Earl of Iddesleigh instructed you to call the attention of the United States Secretary of State to the circumstances of the seizure in Behring's Sea, by the American cruiser "Corwin," of some British Canadian vessels; and His Lordship directed you to state to Mr. Secretary Bayard that Her Majesty's Government felt sure that if the proceedings which were reported to have taken place in the United States District Court were correctly described the United States Government would admit their illegality, and would cause reasonable reparation to be made to the British subjects for the wrongs to which they had been subjected and for the losses which they had sustained.

By a previous despatch of the 9th September, you had been desired to ask to be furnished with any particulars which the United States Government might possess relative to the seizures in question; and on the 10th October you were instructed to enter a protest on behalf of Her Majesty's Government, and reserve for consideration hereafter all rights to compensation.

Nearly four months having elapsed without any definite information being furnished by the United States Government as to the grounds of the seizures, my predecessor instructed you, on the 8th of June [January?] last, to express to Mr. Bayard the concern of Her Majesty's Government at the delay, and to urge the immediate attention of the United States Government to the action of the American authorities in their treatment of these vessels and of their masters and crews.

On the 3d February Mr. Bayard informed you that the record of the judicial proceedings which he had called for was shortly expected to reach Washington, and that, without conclusion at that time of any questions which might be found to be involved in these cases of seizures, orders had been issued by the President's direction for the discontinuance of all pending proceedings, the discharge of the vessels referred to, and the release of all persons under arrest in connection therewith.

On the 4th of April, under instructions from me, you inquired of Mr. Bayard, in view of the approaching fishing season in Behring's Sea, whether the owners of British vessels might rely when not near land on being unmolested by the cruisers of the United States, and you again asked when the record of the judicial proceedings might be expected.

* Left at the Department of State by Sir L. S. Sackville West, Sept. 23, 1887.

Mr. Bayard informed you, in reply (12th April), that the papers referred to had reached him and were being examined; that there had been unavoidable delay in framing appropriate regulations and issuing orders to the United States vessels to police the Alaskan waters; that the Revised Statutes relating to Alaska, sections 1956 and 1971, contained the laws of the United States in relation to the matter; and that the regulations were being considered, and he would inform you at the earliest day possible what had been decided, so that British and other vessels might govern themselves accordingly.

In view of the statements made by Mr. Bayard in his note of the 3d February, to which I have referred above, Her Majesty's Government assumed that, pending a conclusion of the discussion between the two governments on the general question involved, no further similar seizures of British vessels would be made by order of the United States Government. They learn, however, from the contents of Mr. Bayard's note of the 13th ultimo, inclosed in your dispatch, No. 245, of the 15th ultimo, that such was not the meaning which he intended should be attached to his communication of the 3d February; and they deeply regret to find a proof of their misinterpretation of the intentions of the United States Government from an announcement recently received from the commander-in-chief of Her Majesty's naval forces in the Pacific, that several more British vessels engaged in seal hunting in Behring's Sea have been seized when a long distance from land by an American revenue vessel.

Her Majesty's Government have carefully considered the transcript of record of the judicial proceedings in the United States District Court in the several cases of the schooners "Carolina," "Onward," and "Thornton," which were communicated to you in July, and were transmitted to me in your despatch No. 196 of the 12th of that month, and they cannot find in them any justification for the condemnation of those vessels.

The libels of information allege that they were seized for killing fur-seal within the limits of Alaska Territory and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States; and the United States naval Commander Abbey certainly affirmed that the vessels were seized within the waters of Alaska and the Territory of Alaska; but according to his own evidence, they were seized 75, 115, and 70 miles respectively south-southwest of St. George's Island.

It is not disputed, therefore, that the seizures in question were effected at a distance from land far in excess of the limit of maritime jurisdiction, which any nation can claim by international law, and it is hardly necessary to add that such limit cannot be enlarged by any municipal law.

The claim thus set up appears to be founded on the exceptional title said to have been conveyed to the United States by Russia at the time of the cession of the Alaska Territory.

The pretension which the Russian Government at one time put forward to exclusive jurisdiction over the whole of Behring's Sea, was, however, never admitted either by this country or the United States of America. On

the contrary, it was strenuously resisted, as I shall presently show, and the American Government can hardly claim to have received from Russia rights which they declared to be inadmissible when asserted by the Russian Government. Nor does it appear from the text of the Treaty of 1867 that Russia either intended or purported to make any such grant; for by Article I of that instrument Russia agreed to cede to the United States all the territory and dominion then possessed by Russia "on the continent of America and in the adjacent islands" within certain geographical limits described, and no mention was made of any exclusive right over the waters of Behring's Sea.

Moreover, whatever rights as regards their respective subjects and citizens may be reciprocally conferred on the Russian and American Governments by Treaty stipulation, the subjects of Her Majesty cannot be thereby affected, except by special arrangement with this country.

With regard to the exclusive claims advanced in times past by Russia, I transmit to you documents communicated to the United States Congress in 1822, which show the view taken by the American Government of these pretensions.

In 1821 the Emperor of Russia had issued an edict establishing "Rules for the limits of navigation and order of communication along the coast of the Eastern Siberia, the Northwestern coast of America, and the Aleutian, Kurile, and other islands."

The first section of that edict said: "The pursuit of commerce, whaling, and fishing, and of all other industry on all islands, ports, and gulfs, including the whole of the Northwest coast of America, beginning from Behring's Straits to the 51st degree of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring's Straits to the South Cape of the Island of Urup, viz., to the 45° 50' of northern latitude is exclusively granted to Russian subjects;" and section 2 stated: "It is, therefore, prohibited to all foreign vessels not only to land on the coast and islands belonging to Russia, as stated above, but also to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo."

A copy of these regulations was officially communicated to the American Secretary of State by the Russian Minister at Washington on the 11th February, 1822: whereupon Mr. Quincy Adams on the 25th of that month, after informing him that the President of the United States had seen with surprise the assertion of a territorial claim on the part of Russia, extending to the 51st degree of north latitude on the American continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim was made to apply, went on to say that it was expected before any act which should define the boundary between the territories of the United States and Russia, that the

same would have been arranged by treaty between the parties, and that "to exclude the vessels of American citizens from the shore *beyond the ordinary* distance to which territorial jurisdiction extended has excited still greater surprise;" and Mr. Adams asked whether the Russian Minister was authorized to give explanations of the "grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations."

The Russian Minister, in his reply, dated the 28th February, after explaining how Russia had acquired her possessions in North America, said:

"I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend on the northwest coast of America from Behring's Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to shut seas ('mers fermées'), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners; but it preferred only asserting its essential rights without taking advantage of localities."

On the 30th March Mr. Adams replied to the explanations given by the Russian Minister. He stated that, with respect to the pretension advanced in regard to territory, it must be considered not only with reference to the question of territorial rights, but also to that prohibition to the vessels of other nations, including those of the United States to approach within 100 Italian miles of the coasts. That from the period of the existence of the United States as an independent nation their vessels had freely navigated these seas, the right to navigate them being a part of that independence; and with regard to the suggestion that "the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, 'because it claims territory both on its American and Asiatic shores,' it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than ninety degrees of longitude or 4,000 miles." Mr. Adams concluded as follows: "The President is persuaded that the citizens of this Union will remain unmolested in the prosecution of their lawful commerce, and that no effect will be given to an interdiction manifestly incompatible with their rights."

The Convention between the United States of America and Russia of the 17th April, 1824, put an end to any further pretension on the part of Russia to restrict navigation or fishing in Behring's Sea so far as American citizens were concerned; for by Article I it was agreed that in any part of the Great Ocean, commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the High Contracting Powers shall neither be disturbed nor restrained, either in navigation or fishing, saving certain restrictions which are not material to the present issue; and a similar stipulation in the Convention between this country and Russia in the following year (15th May,

1825,) put an end, as regarded British subjects, to the pretensions of Russia to which I have referred, and which had been entirely repudiated by Her Majesty's Government in correspondence with the Russian Government in 1821 and 1822, which for your more particular information I inclose herein.

Her Majesty's Government feel sure that, in view of the considerations which I have set forth in this despatch, which you will communicate to Mr. Bayard, the Government of the United States will admit that the seizure and condemnation of these British vessels and the imprisonment of their masters and crews were not warranted by the circumstances, and that they will be ready to afford reasonable compensation to those who have suffered in consequence, and issue immediate instructions to their naval officers which will prevent a recurrence of these regrettable incidents.

I am, &c.,

SALISBURY.

No. 2.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, September 27, 1886. [Rec'd Sept. 28.]

SIR:

I have the honor to inform you that Her Majesty's Government have received a telegram from the Commander-in-Chief of Her Majesty's naval forces on the Pacific station respecting the alleged seizure of three British Columbian seal schooners by the United States revenue cruiser "Corwin," and I am in consequence instructed to request to be furnished with any particulars which the United States Government may possess relative to this occurrence.

I have, &c.,

L. S. SACKVILLE WEST.

No. 3.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, October 21, 1886. [Rec'd Oct. 22.]

SIR:

With reference to my note of the 27th ultimo requesting to be furnished with any particulars which the United States Government may possess relative to the seizure in the North Pacific waters of three British Columbian seal schooners by the United States revenue cruiser "Corwin," and to which I am without reply, I have the honor to inform you that I am now instructed by the Earl of Iddesleigh, Her Majesty's principal Secretary of State for Foreign Affairs, to protest in the name of Her Majesty's Government against such seizure and to reserve all rights to compensation.

I have, &c.,

L. S. SACKVILLE WEST.

No. 4.

*Earl of Iddesleigh to Sir L. S. Sackville West.**FOREIGN OFFICE, *October 30, 1886.*

SIR:

Her Majesty's Government are still awaiting a report on the result of the application which you were directed by my despatch No. 181 of the 9th ultimo to make to the Government of the United States for information in regard to the reported seizure by the United States revenue cutter "Corwin" of three Canadian schooners while engaged in the pursuit of seals in Behring's Sea.

In the meanwhile, further details in regard to these seizures have been sent to this country, and Her Majesty's Government now consider it incumbent on them to bring to the notice of the United States Government the facts of the case as they have reached them from British sources.

It appears that the three schooners, named respectively the "Carolina," the "Onward," and the "Thornton," were fitted out in Victoria, British Columbia, for the capture of seals in the waters of the Northern Pacific Ocean, adjacent to Vancouver's Island, Queen Charlotte Islands, and Alaska.

According to the depositions enclosed herewith from some of the officers and men,† these vessels were engaged in the capture of seals in the open sea, out of sight of land, when they were taken possession of on or about the 1st August last by the United States revenue cutter "Corwin"—the "Carolina" in latitude 55° 50' north, longitude 168° 53' west; the "Onward" in latitude 50° 52' north, longitude 167° 55' west; and the "Thornton" in about the same latitude and longitude.

They were all at a distance of more than 60 miles from the nearest land at the time of their seizure, and on being captured were towed by the "Corwin" to Ounalaska, where they are still detained. The crews of the "Carolina" and "Thornton," with the exception of the captain and one man on each vessel detained at that port, were, it appears, sent by the steamer "St. Paul" to San Francisco, California, and then turned adrift, while the crew of the "Onward" were kept at Ounalaska.

At the time of their seizure the "Carolina" had 686 sealskins on board, the "Thornton" 404, and the "Onward" 900, and these were detained, and would appear to be still kept at Ounalaska along with the schooners by the United States authorities.

* Left at the Department of State by Sir L. S. Sackville West, November 12, 1886.

† 1. Copy of a letter from Daniel Munroe, master of the Canadian sealing schooner "Onward."

2. Copy of a letter from James Ogilvie, master of the Canadian sealing schooner "Carolina."

3. Deposition of John Dallas, seaman on board the "Thornton"; of Thomas McLardy, cook on board the "Carolina"; of Edward Shields, seaman on board the "Carolina"; and of Wm. Munsie, owner of the "Carolina"—all of the Province of British Columbia.

According to information given in the *Alaskan*, a newspaper published at Sitka, in the Territory of Alaska, and dated the 4th September, 1886, it is reported:

1. That the master and mate of the schooner "Thornton" were brought for trial before Judge Dawson, in the United States District Court at Sitka, on the 30th August last.

2. That the evidence given by the officers of the United States revenue cutter "Corwin" went to show that the "Thornton" was seized while in Behring's Sea, about 60 or 70 miles south-southeast of St. George Island, for the offense of hunting and killing seals within that part of Behring's Sea which (it was alleged by the *Alaskan* newspaper) was ceded to the United States by Russia in 1867.

3. That the judge in his charge to the jury, after quoting the 1st article of the treaty of the 30th March, 1867, between Russia and the United States, in which the western boundary of Alaska is defined, went on to say: "All the waters within the boundary set forth in this treaty to the western end of the Aleutian archipelago and chain of islands are to be considered as comprised within the waters of Alaska, and all the penalties prescribed by law against the killing of fur-bearing animals must, therefore, attach against any violation of law within the limits heretofore described. If, therefore, the jury believe from the evidence that the defendants by themselves, or in conjunction with others, did, on or about the time charged in the information, kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal or animals on the shores of Alaska or in the Behring's Sea east of 193° of west longitude, the jury should find the defendants guilty, and assess their punishment separately at a fine of not less than 200 dollars nor more than 1,000 dollars, or imprisonment not more than six months, or by both such fine, within the limits herein set forth, and imprisonment."

4. That the jury brought in a verdict of guilty against the prisoners, in accordance with which the master of the "Thornton," Hans Guttoulsen, was sentenced to imprisonment for thirty days, and to pay a fine of 500 dollars; and the mate of the "Thornton," Norman, was sentenced to imprisonment for thirty days, and to pay a fine of 300 dollars—which terms of imprisonment are presumably now being carried into effect.

There is also reason to believe that the masters and mates of the "Onward" and "Carolina" have since been tried, and sentenced to undergo penalties similar to those now being inflicted on the master and mate of the "Thornton."

You will observe, from the facts given above, that the authorities of the United States appear to lay claim to the sole sovereignty of that part of Behring's Sea lying east of the westerly boundary of Alaska, as defined in the 1st article of the treaty concluded between the United States and Russia in 1867, by which Alaska was ceded to the United States, and which includes a stretch of sea extending in its widest part some 600 or 700 miles easterly [westery?] from the mainland of Alaska.

In support of this claim, those authorities are alleged to have interfered with the peaceful and lawful occupation of Canadian citizens on the high seas, to have taken possession of their ships, to have subjected their property to forfeiture, and to have visited upon their persons the indignity of imprisonment.

Such proceedings, if correctly reported, would appear to have been in violation of the admitted principles of international law.

I request that you will, on the receipt of this despatch, seek an interview with Mr. Bayard, and make him acquainted with the nature of the information with which Her Majesty's Government have been furnished respecting

this matter, and state to him that they do not doubt that, if on inquiry it should prove to be correct, the Government of the United States will, with their well known sense of justice, at once admit the illegality of the proceedings resorted to against the British vessels and the British subjects above mentioned, and will cause reasonable reparation to be made for the wrongs to which they have been subjected and for the losses which they have sustained.

Should Mr. Bayard desire it, you are authorized to leave with him a copy of this despatch.

I am, &c.,
IDDESLEIGH.

No. 5.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
WASHINGTON, November 12, 1886.

SIR:

The delay in my reply to your letters of September 27th and October 21st, asking for the information in my possession concerning the seizure by the United States revenue cutter "Corwin," in the Behring's Sea, of British vessels, for an alleged violation of the laws of the United States in relation to the Alaskan Seal Fisheries, has been caused by my waiting to receive from the Treasury Department the information you desired. I tender the fact in apology for the delay and as the reason for my silence, and repeating what I said verbally to you in our conversation this morning, I am still awaiting full and authentic reports of the judicial trial and judgment in the cases of the seizures referred to.

My application to my colleague, the Attorney-General, to procure an authentic report of these proceedings was promptly made, and the delay in furnishing the report doubtless has arisen from the remoteness of the place of trial.

So soon as I am enabled, I will convey to you the facts as ascertained in the trial and the rulings of law as applied by the Court.

I take leave also to acknowledge your communication of the 21st of October informing me that you had been instructed by the Earl of Idedesleigh, Her Majesty's principal Secretary of State for Foreign Affairs, to protest against the seizure of the vessels above referred to, and to reserve all rights of compensation.

All of which shall receive respectful consideration.

I have, &c.,
T. F. BAYARD.

No. 6.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, December 7, 1886. [Rec'd Dec. 8.]

SIR:

Referring to your note of the 12th instant [ultimo?] on the subject of the seizure of British vessels in the Behring Sea, and promising to convey to me as soon as possible the facts as ascertained in the trial and the rulings of law as applied by the Court, I have the honour to state that vessels are now as usual equipping in British Columbia for fishing in that sea. The Canadian Government, therefore, in the absence of information, are desirous of ascertaining whether such vessels fishing in the open sea and beyond the territorial waters of Alaska would be exposed to seizure, and Her Majesty's Government at the same time would be glad if some assurance would be given that, pending the settlement of the question, no such seizures of British vessels will be made in Behring Sea.

I have, &c.,

L. S. SACKVILLE WEST.

No. 7.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, 9th January, 1887. [Rec'd Jan. 10.]

SIR:

I have the honor to inform you that I have received instructions from the Earl of Iddesleigh, Her Majesty's principal Secretary of State for Foreign Affairs, again to bring to your notice the grave representations made by Her Majesty's Government respecting the seizure of the British vessels "Carolina," "Onward," and "Thornton" in Behring's Sea by the United States cruiser "Corwin," to which no reply has as yet been received.

On the 27th of September last I had the honor to address to you a note, in which I stated that Her Majesty's Government requested to be furnished with any particulars which the United States Government might possess relative to this occurrence.

On the 21st of October last I had the honor to inform you that I was instructed by the Earl of Iddesleigh to protest in the name of Her Majesty's Government against such seizures, and to reserve all rights to compensation.

In a note dated the 12th of November last you were good enough to explain the delay which had occurred in answering these communications, and on the same day I had the honor to communicate to you a despatch from the Earl of Iddesleigh a copy of which, at your request, I placed in your hands.

On the 7th ultimo I again had the honor to address you, stating that vessels were equipping in British Columbia for fishing in Behring's Sea, and that the Canadian Government were desirous of ascertaining whether such vessels fishing in the open sea and beyond the territorial waters of Alaska would be exposed to seizure, and that Her Majesty's Government would be glad if some assurance could be given that pending the settlement of the questions no such seizures of British vessels would be made in Behring's Sea.

The vessels in question were seized at a distance of more than sixty miles from the nearest land at the time of their seizure. The master of the "Thornton" was sentenced to imprisonment for thirty days, and to pay a fine of five hundred dollars, and there is reason to believe that the masters of the "Onward" and "Carolina" have been sentenced to similar penalties.

In support of this claim to jurisdiction over a stretch of sea extending in its widest part some six or seven hundred miles from the mainland, advanced by the judge in his charge to the jury, the authorities are alleged to have interfered with the peaceable and lawful occupation of Canadian citizens on the high seas; to have subjected their property to forfeiture and to have visited upon their persons the indignity of imprisonment. Such proceedings, therefore, if correctly reported, appear to have been in violation of the admitted principles of international law.

Under these circumstances Her Majesty's Government do not hesitate to express their concern at not having received any reply to their representations, nor do they wish to conceal the grave nature which the case has thus assumed, and to which I am now instructed to call your immediate and most serious attention. It is unnecessary for me to allude further to the information with which Her Majesty's Government have been furnished respecting these seizures of British vessels in the open seas, and which for some time past has been in the possession of the United States Government because Her Majesty's Government do not doubt that if, on inquiry, it should prove to be correct, the Government of the United States will, with their well known sense of justice, admit the illegality of the proceedings resorted to against the British vessels and the British subjects above mentioned, and will cause reasonable reparation to be made for the wrongs to which they have been subjected and for the losses which they have sustained.

In conclusion, I have the honor again to refer to your note of the 12th of November last, and to what you said verbally to me on the same day, and to express the hope that the cause of the delay complained of in answering the representations of Her Majesty's Government on this grave and important matter may be speedily removed.

I have, &c.,

L. S. SACKVILLE WEST.

No. 8.

Mr. Bayard to Sir I. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, January 12, 1887.

SIR:

Your note of the 9th instant was received by me on the next day, and I regret exceedingly that, although my efforts have been diligently made to procure from Alaska the authenticated copies of the judicial proceedings in the cases of the British vessels "Carolina," "Onward," and "Thornton," to which you refer, I should not have been able to obtain them in time to have made the urgent and renewed application of the Earl of Iddesleigh superfluous.

The pressing nature of your note constrains me to inform you that on September 27 last, when I received my first intimation from you that any question was possible as to the validity of the judicial proceedings referred to, I lost no time in requesting my colleague, the Attorney-General—in whose Department the case is—to procure for me such authentic information as would enable me to make full response to your application.

From week to week I have been awaiting the arrival of the papers, and to-day, at my request, the Attorney-General has telegraphed to Portland, Oregon, the nearest telegraph station to Sitka, in Alaska, in order to expedite the furnishing of the desired papers.

You will understand that my wish to meet the questions involved in the instructions you have received from your government is averred, and that the delay has been enforced by the absence of requisite information as to the facts.

The distance of the vessels from any land, or the circumstances attendant upon their seizure, are unknown to me save by the statements in your last note, and it is essential that such facts should be devoid of all uncertainty.

Of whatever information may be in the possession of Her Majesty's Government I have, of course, no knowledge, or means of knowledge, but this Department of the Government of the United States has not yet been placed in possession of that accurate information which would justify its decision in a question which you are certainly warranted in considering to be of grave importance.

I shall diligently endeavor to procure the best evidence possible of the matters inquired of, and will make due response thereupon when the opportunity of decision is afforded to me.

You require no assurance that no avoidance of our international obligations need be apprehended.

I have, &c.,

T. F. BAYARD.

No. 9.

Sir L. S. Sackville West to Mr. Bayard.

BRITISH LEGATION, WASHINGTON,

February 1, 1887. [Rec'd Feb. 2.]

SIR:

With reference to your note of the 12th ultimo, I have the honour to inform you that under date of the 27th ultimo the Marquis of Salisbury instructs me to enquire whether the information and papers relative to the seizure of the British schooners, "Carolina," "Onward" and "Thornton," have reached the United States Government.

I have, &c.,

L. S. SACKVILLE WEST.

No. 10.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, Feb. 3, 1887.

SIR:

I beg to acknowledge your note of yesterday's date, [Feb. 1,?] received to-day.

Upon its receipt I made instant application to my colleague, the Attorney-General, in relation to the record of the judicial proceedings in the cases of the three British vessels arrested in August last in Behring Sea for violation of the United States laws regulating the Alaskan seal fisheries.

I am informed that the documents in question left Sitka on the 26th of January, and may be expected to arrive at Port Townsend, in Washington Territory, about the 7th instant, so that the papers, in the usual course of mail, should be received by me within a fortnight.

In this connection I take occasion to inform you that, without conclusion at this time of any questions which may be found to be involved in these cases of seizure, orders have been issued by the President's direction for the discontinuance of all pending proceedings, the discharge of the vessels referred to, and the release of all persons under arrest in connection therewith.

I have, &c.,

T. F. BAYARD.

No. 11.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, February 4, 1887. [Rec'd Feb. 5.]

SIR:

I have the honor to acknowledge the receipt of your note of the 3d instant, informing me that without conclusion at this time of any questions which may be found to be involved in the cases of seizure of British vessels in Behring's Sea, orders have been issued, by the President's direction, for the discontinuance of all pending proceedings, the discharge of the vessels referred to, and the release of all persons under arrest in connection therewith.

I have, &c.,

L. S. SACKVILLE WEST.

No. 12.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, April 4, 1887. [Rec'd April 4.]

SIR:

In view of the approaching fishing season in Behring's Sea and the fitting out of vessels for fishing operations in those waters, Her Majesty's Government have requested me to inquire whether the owners of such vessels may rely on being unmolested by the cruisers of the United States when not near land.

Her Majesty's Government also desires to know whether the documents referred to in your note of the 3d of February last connected with the seizure of certain British vessels beyond the three-mile limit and legal proceedings connected therewith have been received; and I have the honor, therefore, to request you to be good enough to enable me to reply to these inquiries on the part of Her Majesty's Government with as little delay as possible.

I have, &c.,

L. S. SACKVILLE WEST.

No. 13.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, April 12, 1887.

SIR:

I have the honor to acknowledge your note of the 4th instant relative to the fisheries in Behring's Sea, and inquiring whether the documents referred to in my note of February 3d, relating to the cases of seizure in those

waters of vessels charged with violating the laws of the United States regulating the killing of fur-seals, had been received.

The records of the judicial proceedings in the cases in the District Court in Alaska referred to, were only received at this Department on Saturday last, and are now under examination.

The remoteness of the scene of the fur-seal fisheries and the special peculiarities of that industry have unavoidably delayed the Treasury officials in framing appropriate regulations and issuing orders to United States vessels to police the Alaskan waters for the protection of the fur-seals from indiscriminate slaughter and consequent speedy extermination.

The laws of the United States in this behalf are contained in the Revised Statutes relating to Alaska in Sections 1956-1971, and have been in force for upwards of seventeen years; and prior to the seizures of last summer but a single infraction is known to have occurred, and that was promptly punished.

The question of instructions to Government vessels in regard to preventing the indiscriminate killing of fur-seals is now being considered, and I will inform you at the earliest day possible what has been decided, so that British and other vessels visiting the waters in question can govern themselves accordingly.

I have, &c.,

T. F. BAYARD.

No. 14.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, July 8, 1887. [Rec'd July 9.]

SIR:

With reference to your note of the 12th April stating that the records of the judicial proceedings in the cases of the British vessels seized in Behring's Sea had been received, I have the honor to inform you that the Marquis of Salisbury has instructed me to request you to be good enough to furnish me with a copy of the same for the information of Her Majesty's Government.

I have, &c.,

L. S. SACKVILLE WEST.

No. 15.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, July 11, 1887.

SIR:

Complying with the request contained in your note of the 8th instant, conveyed to me under the instructions of your Government, I have the honor to enclose you two printed copies of the judicial proceedings in the United States District Court for the District of Alaska in the several cases of libel against the schooners "Onward," "Carolina," and "Thornton," for killing fur-seals in Alaskan waters.

Accept, &c.,

T. F. BAYARD.

Enclosure in No. 15. Transcript of record in cases referred to.

In the United States District Court,

FOR THE DISTRICT OF ALASKA.

THE UNITED STATES, LIBELLANT,

vs.

THE SCHOONER "CAROLENA," HER
TACKLE, ETC.

*On Libel of Information
for being engaged in
the business of killing
fur-seal in Alaska.*

TRANSCRIPT OF RECORD.

*On the 28th day of August, 1886, was filed the following Libel
of Information.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

AUGUST SPECIAL TERM, 1886.

To the HONORABLE LAFAYETTE DAWSON,

Judge of said District Court:

The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Carolina," her tackle, apparel, boats, cargo and furniture and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States and on special duty in the waters of the District of Alaska, heretofore, to wit, on the first day of

August, 1886, within the limits of Alaska Territory and in the waters thereof, and within the civil and judicial District of Alaska, to wit in the waters of that portion of Behring's Sea belonging to said District, on waters navigable from the sea by vessels of ten or more tons burden, seized the ship or vessel commonly called a Schooner, the "Carolena," her tackle, apparel, boats, cargo and furniture being the property of some person or persons to said Attorney unknown, as forfeited to the use of the United States for the following causes:

That the said vessel was found engaged in killing fur seal within the limits of Alaska Territory and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular the premises are and were true and within the admiralty and maritime jurisdiction of this Court; and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the aforementioned and described schooner or vessel, being a vessel of over twenty tons burden, her tackle, apparel, boats, cargo and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the District aforesaid.

Wherefore the said Attorney prays that the usual process and monition of this honorable Court issue in this behalf, and that all persons interested in the beforementioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo and furniture, may for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this Honorable Court, as forfeited to the use of the said United States according to the form of the Statutes of the said United States in such case made and provided.

M. D. BALL,

U. S. Dist. Attorney for the Dist. of Alaska.

Thereupon issued forthwith the following monition:

DISTRICT OF ALASKA SEAL.

The President of the United States to the Marshal of the District of Alaska greeting:

Whereas a libel of information hath been filed in the District Court of the United States for the District of Alaska, on the 28th day of August in the year 1886, by M. D. Ball, United States Attorney for the District aforesaid, on behalf of the United States of America, against the schooner "Carolena," her tackle, apparel, boats, cargo and furniture, as forfeited to the use of the United States for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said schooner "Carolena," her tackle, apparel, boats, cargo and furniture etc. may be cited in general and special to answer the premises and all proceedings being had, that the said schooner "Carolena," her tackle, apparel, boats, cargo and furniture may for the causes in the said libel of information mentioned be condemned as forfeited to the use of the United States.

You are therefore hereby commanded to attach the said schooner "Carolena," her tackle, apparel, boats, cargo and furniture, to detain the same in your custody until the further order of the Court respecting the same, and to give notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel of information, that they be and appear before the said Court to be held in and for the District of Alaska, on the 4th day of October, 1886, at 10 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness the Honorable Lafayette Dawson, Judge of said Court, and the seal thereof affixed at the City of Sitka in the District of Alaska, this 28th day of August in the year of Our Lord One Thousand, eight hundred and eighty-six and of the Independence of the United States the one hundred and eleventh.

[SEAL.]

ANDREW T. LEWIS,
Clerk.

*On the 6th day of September, 1886, was filed the following
Affidavit:*

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF ALASKA
UNITED STATES OF AMERICA.

THE UNITED STATES OF AMERICA	}
<i>vs.</i>	
THE SCHOONER "CAROLENA."	

UNITED STATES OF AMERICA, }
DISTRICT OF ALASKA. } ss.

C. A. Abbey being duly sworn deposes and says:—

That he is and at all times hereinmentioned was, a Captain in the United States Revenue Marine, and in Command of the United States Revenue Cutter "Corwin."

That affiant and the following named officers and men of said "Corwin" are material and necessary witnesses for the United States in the above entitled action, to wit:—J. C. Cantwell, Lieutenant; Thos. Singleton, seaman; J. U. Rhodes, Lieutenant; T. Lorensen, seaman; and J. H. Douglass, Pilot.

That owing to scarcity of provisions and fuel upon said "Corwin," the said "Corwin" and deponent and said witnesses will be obliged to, and are about to go to sea within five days, and out of the district in which the said case is to be tried, and to a greater distance than one hundred miles from the place of trial of said action before the time of said trial:

That there is urgent necessity for taking the depositions of affiant and said witnesses forthwith.

That James Blake was the mate of said Schooner at the time of its seizure, and is the only person or officer of said Schooner now within the jurisdiction of this Court, or upon whom service of notice can be made as affiant is informed and believes.

C. A. ABBEY.

Subscribed and sworn to before me this 6th day of September, 1886.

ANDREW T. LEWIS, *Clerk.*

On the same day was entered the following order :

IN THE MATTER OF THE UNITED STATES

SCHOONER "THORNTON,"	Case No.	803.
" " "CAROLENA,"	"	81.
" " "ONWARD,"	"	89.
" " "SAN DIEGO,"	"	92.

In the above entitled actions urgent necessity and good cause appearing therefor from the affidavits of C. A. Abbey, now, on motion of M. D. Ball, United States District Attorney for Alaska, and Counsel for the United States herein, it is ordered that the depositions of the witnesses C. A. Abbey, J. W. Howison, J. C. Cantwell, J. U. Rhodes, J. H. Douglass, C. T. Winslow, Albert Leaf, C. Wilhelm, Thos. Singleton and T. Lorensen be taken before the Clerk of the said District Court on Tuesday the 7th day of September, 1886, at 7 o'clock p. m. or as soon thereafter as the matter can be reached at the office of said Clerk at Sitka, Alaska, and if not completed on said evening, then the taking of said depositions to be continued by said Clerk, from time to time until completed. That notice of the time and place of taking said depositions be served by the Marshal of said District on Hans Guttormsen, James Blake, Daniel Munroe and Charles E. Raynor, and upon W. Clark Esq., Attorney at Law, on or before September 7th at 12 m. and that such shall be due and sufficient and reasonable notice of the taking of said depositions.

Done in open Court this 6th day of September, 1886, now at this time

W. Clark Esq. being present in Court waives service of notice.

On the 7th day of September, 1886, was filed the following notice and return thereof:—

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE DISTRICT OF ALASKA,
UNITED STATES OF AMERICA.

THE UNITED STATES	}
THE SCHOONER "CAROLENA."	

To James Blake greeting: You are notified that by order of Lafayette Dawson, Judge of said District Court, that the depositions of C. A. Abbey, J. C. Cantwell, J. U. Rhodes and J. H. Douglass, will be taken before the Clerk of said District Court at his Office at Sitka in said District on Tuesday, September 7th, 1886, at 7 o'clock p. m., or as soon thereafter as the matter can be reached, and if not completed on said evening, the taking of said depositions will be continued by said Clerk from time to time until completed.

Dated September 7th, 1886.

ANDREW T. LEWIS,
Clerk.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF ALASKA.

This is to certify that on the 7th day of September, 1886, before 12 o'clock noon of that day, I served the annexed notice on the within named James Blake, at Sitka, District of Alaska, by then and there personally delivering to said James Blake a copy of said notice. And then and there gave him the privilege of being present at the taking of said depositions.

Dated September 9th, 1886.

BARTON ATKINS,
U. S. Marshal.

On the 9th day of September, 1886, were filed the following depositions:—

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE DISTRICT OF ALASKA,
UNITED STATES OF AMERICA.

THE UNITED STATES OF AMERICA

v. s.

THE SCHOONER "CAROLENA."

No. 91

Depositions of Witnesses sworn and examined before me on the 7th day of September, A. D. 1886, at 7 o'clock p. m. of said day and on September 8th and 9th, 1886, thereafter, at the Clerk's office of said Court in Sitka, District of Alaska, United States of America, by virtue and in pursuance of the order of said Court, made and entered in the above entitled action on September 6th, 1886, directing that the testimony and depositions of said witnesses be taken before me at said first mentioned time and place and at such subsequent times as the taking of the same might be continued to by me, in said action then and there pending in said District Court between the United States as plaintiff and the Schooner "Carolina" as defendant, on behalf of and at the instance of the said plaintiff, the United States, and upon notice of the time and place of taking of said depositions, served upon James Blake, the mate of said Schooner, he being the only officer of said Schooner upon whom service could be made, and upon W. Clark Esq. his Attorney, the owners of said Schooner being unknown and without the jurisdiction of this Court.

Captain C. A. Abbey being duly sworn deposes and says:—

Q. State your name and occupation.

A. Captain C. A. Abbey, in the United States Revenue Marine Service, at present in command of the U. S. Revenue Steamer "Corwin" on special duty in Alaskan waters, for the protection of the Seal islands and of the Government interests in Alaska generally.

Q. What were you doing and what occurred on the 1st of August last in the line of your duty?

A. Cruising in Behring Sea about 75 miles south-southeast from St. George's island and I found the British Schooner "Carolina" of Victoria, B. C., drifting with sails down. Her boats were absent and she was evidently a sealer. I saw dead seal lying upon her forward deck, inquired of the schooner in which direction her boats were.

I then ordered her to be seized by Lieut. Cantwell for killing fur seal in the waters of Alaska, took her in tow and proceeded to hunt up her boats, all four of which I found with freshly killed fur seal in them, arms, ammunition and hunters, some of whom I saw shooting at the seal in the water. These boats all went on board the "Carolina." On this evidence I caused the vessel to be seized by Lieut. Cantwell, I took her in tow and proceeded with her to Unalaska where I placed the vessel, tackle, cargo, furniture and appurtenances in charge of Deputy U. S. Marshal Isaac Anderson of Unalaska; the cargo of fur seal skins being stored in "Keuch," in one of the warehouses of the Alaska Commercial Company and under seal. The arms and ammunition of this vessel I took on board the "Corwin" and brought to Sitka and delivered into the custody of the U. S. Marshal there.

The vessel tackle, furniture and cargo are now in the custody of the U. S. Marshal of this District.

Q. Was this the vessel against which this libel of information is filed?

A. It is.

Q. Did this all occur within the waters of Alaska and the Territory of Alaska and within the jurisdiction of this Court?

A. It did.

Q. Did this occur within the waters of the Sea navigable for vessels of ten (10) tons burden or over?

A. It did.

C. A. ABBEY.

Subscribed and sworn to before me this 9th day of September,

A. D. 1886, after having been read over by me to deponent.

ANDREW T. LEWIS,
Clerk.

Lieutenant John C. Cantwell being duly sworn deposes and says:—

Q. State your name, occupation and age.

A. John C. Cantwell, 3d Lieutenant, U. S. Revenue Marine Service, at present on duty on the U. S. Revenue Steamer "Corwin" and over the age of twenty-one years.

Q. Were you so on the 1st day of August last?

A. I was.

Q. State what occurred on that day in the line of your duty.

A. A schooner was sighted from the "Corwin" and I was directed by Capt. Abbey to board her. I found her to be the Schooner "Carolena" of Victoria, B. C. James Ogilvie, Captain and James Blake, Mate. I saw dead seal upon her deck and the Captain admitted that he was engaged in taking seal and that four of the Schooner's boats were at the time absent from the vessel engaged in killing seals. I signaled this fact to Capt. Abbey and he directed me to seize the vessel which I did and the "Corwin" took us in tow.

Q. Do you recognize these papers?

A. I do. This paper marked (Ex. "I") is the certificate of registry of the Schooner "Carolena," of Victoria B. C. (*Said certificate is dated March 21st, 1870, and represents said Schooner as of 3100 tons burden and owned by Francis Armstrong at Victoria, B. C.*) This paper marked (Ex. "J") is the bill of health of said schooner. (*Said bill of health is dated at Victoria, B. C. (May 19th 1886 and represents said Schooner "Carolena" as then ready to depart for Behring Sea and Okhotsk Sea and other places beyond the Sea, with James Ogilvie, Master, and eleven persons including said Master.*) This paper marked (Ex. "K") is the coasting license of said schooner. (*Said license is in the usual form, to James Ogilvie, Master of the Schooner "Carolena," dated at Victoria, B. C., Feb. 16th 1886, and in terms expires on the 30th day of June 1886.*) This paper marked (Ex. "L") is the Clearance of said Schooner. (*Said clearance is for said schooner as of 3100 tons, navigated with eleven men, James Ogilvie, Master, bound for Pacific Ocean, Behring Sea and Okhotsk Sea, on a fishing and hunting voyage, and is dated at Victoria, B. C., May 19th 1886.*) All of which papers were found on board of the "Carolena" at the time of seizure and taken possession of by me.

Q. State how many men the "Carolena" had on board as crew when seized?

A. Thirteen or fourteen.

Q. State whether this is a reasonable number of men for ordinary purposes of commerce and navigation.

A. It is an unusually large number for that purpose on a vessel of that size.

JOHN C. CANTWELL,
3d Lieut. U. S. R. M.

Subscribed and sworn to before me this 9th day of September,

A. D. 1886, after having been read over by me to deponent.

[SEAL.]

ANDREW T. LEWIS,
Clerk U. S. Dist. Court.

John U. Rhodes being duly sworn deposes and says:—

Q. State your name, age and occupation

A. John U. Rhodes, Lieut. U. S. Revenue Marine and at present on duty on the U. S. Revenue Steamer "Corwin" and over the age of 21 years.

Q. State what arms and ammunition were seized on the Schooner "Carolena" at the time of her seizure.

A. 4 Rifles

1 Musket.

5 Shot guns

171 Shot gun cartridges

353 Rifle cartridges.

14½ Bags buck-shot

½ Bag of bullets

40 Bags of wads

21 Boxes wads

13 " primers

1½ " of caps

91 lbs. powder

Q. Were there any nautical instruments seized on the "Carolena" except what is included in the general inventory?

A. 1 Octant.

1 Quadrant.

Q. What has become of this property?

A. It has all been delivered to the U. S. Marshal at Sitka and is now in his custody.

JOHN U. RHODES.

Subscribed and sworn to before me this 9th day of September,

A. D. 1886, after having been read over by me to deponent.

[SEAL.]

ANDREW T. LEWIS,

Clerk U. S. Dist. Court.

J. H. Douglass being duly sworn deposes and says:—

Q. State your name, age and occupation.

A. J. H. Douglass, am over the age of 21 years, am a Pilot in the Revenue Marine Service of the U. S. and have been so for 7 years last past. I am now, and on the first of August 1886, was, Pilot on the Revenue Steamer "Corwin."

Q. State what experience you have had in the fur sealing business and your knowledge of the habits of the fur seal.

A. I have been cruising for more than 15 years off and on in Alaskan waters always as an officer or pilot and have visited the Pribyloff Islands, St. Paul and St. George, several hundred times and am perfectly familiar with the sealing business as conducted on those islands and understand the migrating habits of the fur seal. From about the 1st of May to about the 1st of July of each year the fur seal is migrating north through the Unimak and Akutan passes to these islands for breeding purposes. They go to no other place in the known world except these islands and Copper Island for breeding purposes. After the breeding season of about a month they begin to migrate south and until into November of each year are migrating south through Behring Sea. During this season from May till November the fur seal are plenty in the waters adjacent to the Pribyloff islands and are migrating to and from these islands and are at all times very plenty between Unimak pass and said islands in a track about 30 miles wide which seems to be their highway to and from said islands. The Schooner "Carolena" and her boats when seized were directly in this track. I was present at time of seizure.

J. H. DOUGLASS.

Subscribed and sworn to before me this 9th day of September,

A. D. 1886, after having been read over by me to deponent.

[SEAL.]

ANDREW T. LEWIS,

Clerk U. S. Dist. Court.

Thomas Singleton being duly sworn deposes and says:

Q. State your name, age, and occupation.

A. Thomas Singleton, am over the age of 21 years, and am a seaman. Was employed on the Steamer "Corwin" on the 1st day of August 1886 when the "Carolena" was seized. I was sent on board the "Carolena" right after the seizure and saw a number of dead fur seal on deck and some of them had fur on them. Saw also some fresh fur seal skins in the boats.

THOMAS SINGLETON.

Subscribed and sworn to before me this 8th day of September,
1886 after having been read over by me to deponent.

[SEAL.]

ANDREW T. LEWIS,
Clerk U. S. Dist. Court.

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF ALASKA,
UNITED STATES OF AMERICA.

THE UNITED STATES vs. THE SCHOONER "CAROLENA."	}	No. 51.
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Whereas on the 6th day of December, 1886, the said District Court duly made and entered in the journal of said Court an order in the above entitled action directing that the testimony and depositions of the witnesses: C. A. Abbey, J. C. Cantwell, J. U. Rhodes, J. H. Douglass and Thomas Singleton be taken before me, the Clerk of said Court, at the time or times and place and upon such notice as are specified in said order:

Now therefore this is to certify:—That in pursuance of said order, on September 7th, 1886, at 7 o'clock p. m., each and all of the above-named witnesses appeared before me at the Clerk's office of said Court at Sitka, District of Alaska, United States of America; That M. D. Ball Esq. Dist. Attorney of said Court and District and W. H. Payson Esq. appeared then and there on behalf of and as attorneys and proctors for the United States, the Libellant herein; and W. Clark Esq. then and there appeared on behalf of and as attorney and proctor for the said Schooner and her owners; and James Blake then and there appeared in pursuance of notice served upon him.

That I was unable to complete the taking of said depositions on said 7th day of September 1886, and I continued the taking thereof on the 8th and 9th of September 1886, and completed the same on said last named day. That the said parties by their said Attorneys and proctors then and there appeared and were present on each of said last named days and at all times during the taking of said depositions. That each of said witnesses was then and there first duly cautioned and sworn by me, that the evidence he should give in said action, should be the truth, the whole truth, and nothing but the truth, and thereafter each of said witnesses was then and there examined before me, and I then and there took down the statement and testimony of each of said witnesses, and reduced the same to writing in his presence, and then and there read the same over to him; and he then and there, after the same had been so reduced to writing and read over to him, subscribed the same in my presence, and swore to the truth thereof.

In witness whereof I have herunto set my hand and the seal of said District Court this 9th day of September, 1886.

[SEAL.]

ANDREW T. LEWIS,
*Clerk of the U. S. District Court in and for the District of Alaska,
United States of America.*

*On September 20th 1886 was filed the following Amended Libel
of Information:—*

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF ALASKA.
UNITED STATES OF AMERICA.

August Special Term, 1886.

To the HONORABLE LAFAYETTE DAWSON,
Judge of said District Court.

The amended libel of information of M. D. Ball, Attorney for the United States, for the District of Alaska, who prosecutes on behalf of said United States and being present here in Court in his own proper person, in the name and on behalf of the said United States, alleges and informs as follows, to wit:—

That C. A. Abbey, an officer in the Revenue Marine Service of the United States, duly commissioned by the President of the United States, in command of the United States Revenue Cutter "Corwin," and now on special duty in the waters of the District of Alaska, heretofore, to wit on the 1st day of August 1886 within the limits of Alaska Territory, and in the waters thereof, and within the Civil and Judicial District of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the United States and said District, on waters navigable from the sea by vessels of ten or more tons burden, seized the Schooner "Carolena," her tackle, apparel, boats, cargo and furniture, being the property of some person or persons unknown to said Attorney. The said property is more particularly described as follows, to wit:—

1 Schooner "Carolena" of Victoria, B. C., 4 canoes, 1 yawl, carpenter's tools, clock, chronometer, nautical instruments, sails and running gear, 2 anchors, ropes, twine, oars, paddles, rowlocks, &c., lamps, tanks, provisions, 685 fur seal skins, 12 pup seal skins, 1 hair seal skin, 4 rifles, 5 shot guns, and ammunition for same, and all other property found upon or appurtenant to said Schooner.

That said C. A. Abbey was then and there duly commissioned and authorized by the proper Department of the United States to make said seizure.

That all of said property was then and there seized as forfeited to the United States for the following causes:—

That said vessel, her captain, officers and crew were then and there found engaged in killing fur seals within the limits of Alaska Territory and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

That all the said property, after being seized as aforesaid, was brought into the port of Unalaska in said Territory, and delivered into the keeping of Isaac Anderson, a Deputy U. S. Marshal of this District, with the exception of the said arms and ammunition, which latter were brought into the port of Sitka in said District, and turned over to the U. S. Marshal of this District and all of said property is now within the Judicial District of Alaska, United States of America.

And the said M. D. Ball, Attorney as aforesaid, further informs and alleges:—

That on the 1st day of August, 1886, James Blake and certain other persons whose names are to said U. S. Attorney unknown, who were then and there engaged on board of the said schooner "Carolena" under the direction and by the authority of James Ogilvie, then and there Master of said Schooner, engaged in killing and did kill, in the Territory and District of Alaska, and in the waters thereof, to wit, 20 fur seals, in violation of Section 1956 of the Revised Statutes of the United States, in such cases made and provided.

That the said 685 fur seal skins, 12 pup seal skins and 1 hair seal skin, and other goods so seized on board of said Schooner "Carolena" constituted the cargo of said Schooner at the time of the killing of said fur seals, and at the time of said seizure.

And said Attorney saith that all and singular the premises were and are true and within the Admiralty and Maritime Jurisdiction of the United States, and of this Honorable Court, and that by reason thereof, and by force of the Statutes in such cases made and provided, the aforementioned Schooner, being a vessel of over 20 tons burden, and her said tackle, apparel, boats, cargo and furniture, became and are forfeited to the use of the United States.

Wherefore the said Attorney prays that the usual process and monition of this Honorable Court issue in this behalf against said Schooner and all said hereinbefore described property to enforce the forfeiture thereof, and requiring notice to be given to all persons to appear and show cause, on the return day of said process why said forfeiture should not be decreed; and that after due proceedings are had, all of said property be adjudged, decreed and condemned as forfeited to the use of the United States; and for such other relief as may be proper in the premises.

Dated September 20th, 1886.

M. D. BALL,
U. S. Dist. Attorney for the District of Alaska.

*On the same day was filed the following claim by Proctor
for owners:*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

In Admiralty.

*In the matter of the Libel of Informa-
tion against the Schooner "Carolena,"
her tackle, apparel, furniture and
cargo.*

Claim by Proctor for Owners.

And now W. Clark the duly authorized Proctor for Munzie & Co. owners of the property above named, intervening for the interest of the said Munzie & Co. of Victoria, B. C., owners of the said Schooner "Carolena," her tackle, apparel, furniture and cargo as set forth in the libel of information herein, appears before this Honorable Court and makes claim to the said Schooner "Carolena," her tackle, apparel, cargo and furniture, as set forth in the said libel of information and as the same are attached by the Marshal under process of this Court at the instance of M. D. Ball Esq. U. S. Dist. Attorney for the District of Alaska.

And the said W. Clark, Proctor as aforesaid, avers that the said Munzie & Co. were in possession of the said Schooner "Carolena" at the time of the attachment thereof and that the said Munzie & Co. above named are the true and *bona fide* owners of the said Schooner "Carolena" her tackle, apparel, cargo and furniture as seized by the Marshal as aforesaid and that no other person is the owner thereof.

Wherefore he prays to defend accordingly.

W. CLARK & D. A. DINGLEY,
Proctors for Claimants.

W. CLARK.

On the same day was filed the following demurrer:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

UNITED STATES <i>vs.</i> MUNZIE & CO. AND SCHOONER "CARO- LENA."	} <i>Demurrer.</i>
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The demurrer of Munzie & Co., claimants of the property proceeded against in the above cause, to the amended information filed herein.

1st. The said claimant by protestation, not confessing all or any of the matters, in said amended information contained, to be true, demurs thereto and says that the said matters in manner and form, as the same are in said information stated and set forth, are not sufficient in law for the United States to have and maintain their said action for the forfeiture of the property aforesaid.

2d. The said Claimants by protestation deny that this Court has jurisdiction to determine or try the question hereby put in issue.

3d. And that said Claimants are not bound in law to answer the same.

Wherefore the said Claimants pray that the said information may be dismissed with costs.

W. CLARK & D. A. DINGLEY,
Proctors for Claimants.

Which was overruled by the Court.

On the same day was filed the following answer:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

UNITED STATES <i>vs.</i> MUNZIE & CO. AND SCHOONER "CARO- LENA."	} <i>Answer.</i>
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The answer of Munzie & Co., owners and claimants of the said Schooner "Carolena," her tackle, apparel, furniture and cargo, as the same are set forth in the information filed herein in behalf of the United States.

And now come Munzie & Co., Claimants as aforesaid, and for answer to said information against the said Schooner "Carolena," her tackle, apparel and cargo as set forth in said information say that the said tackle, apparel and cargo as set forth in the information mentioned, did not nor did any part thereof become forfeited in manner and form as in said information in that behalf alleged, or at all.

Wherefore, the said Claimants pray that said information be dismissed with costs to these claimants attached.

W. CLARK & D. A. DINGLEY,
Proctors for Claimants.

On the 22nd day of September, 1886, were filed the following exceptions to answer:—

UNITED STATES DISTRICT COURT, DISTRICT OF ALASKA, UNITED STATES OF AMERICA.

UNITED STATES <i>vs.</i> THE SCHOONER "CAROLENA."	}	<i>No. 51.</i>
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The said Libellant hereby excepts to the sufficiency of the defendants' answer herein, on the following grounds:—

1st. Said answer is not properly or at all verified as required by Rule 27 of the U. S. Admiralty rules;

2nd. Said answer is not full, explicit or distinct to each or any allegation of the libel herein, as required by said rule;

3rd. Said answer does not deny or admit any of the allegations of fact in said libel, but merely denies a conclusion of law.

September 21st, 1886.

M. D. BALL & W. H. PAYSON,
Proctors for Libellant.

Which exceptions were sustained by the Court, and on the same day was filed the following amended answer:—

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

UNITED STATES <i>vs.</i> MUNZIE & CO. AND SCHOONER "CAROLENA."	}	<i>Amended Answer.</i>
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In Admiralty.

*To the HONORABLE LAFAYETTE DAWSON,
Judge of the U. S. District Court
for the District of Alaska.*

James Blake, the duly authorized mate of the Schooner "Carolena," for Munzie & Co., intervening in the interest of and on behalf of said Munzie & Co., owners and claimants of said Schooner "Carolena," her tackle, apparel, furniture and cargo for amended answer to the libel of information herein against said Schooner, her tackle, apparel, furniture and cargo alleges as follows:—

1st. That he denies each and every material allegation in said libel of information contained;

2nd. Denies that the said Schooner "Carolena," her tackle, apparel, furniture, and cargo, and the property appertaining thereto as set forth in said libel of information or any part thereof became forfeited to the United States;

3rd. Denies that said Schooner, her Captain, officers and crew or any one of them were found engaged in killing fur seal within the limits of Alaska Territory and within the waters thereof in violation of section 1956 of the Revised Statutes of the United States as set forth in said libel of information or at all;

4th. Denies that they killed any number of fur seal or other fur bearing animals within the waters of Alaska or within said Territory of Alaska or in any part thereof.

5th. That all and singular the premises herein set forth are true.

Wherefore he prays that this Honorable Court will be pleased to pronounce against the libel herein and that the same may be dismissed with costs to these claimants to be taxed.

W. CLARK & D. A. DINGLEY,

Proctors for Claimants.

UNITED STATES, }
DISTRICT OF ALASKA. } ss.

James Blake being first duly sworn upon his oath says:—

I am the Mate of said Schooner intervening for the within-named claimants. That I have read the foregoing answer and know the contents thereof and that the same is true as I verily believe.

JAMES BLAKE.

Subscribed and sworn to before me this 22d day of September,

A. D. 1886.

ANDREW T. LEWIS,

Clerk of the U. S. Dist. Court for the District of Alaska.

On the 4th day of October, 1886, the following return was made to the Monition heretofore cited, page 5.

SITKA, }
DISTRICT OF ALASKA. } ss.

Be it remembered that, in obedience to the annexed monition, I have attached the within described property and now hold the same in my possession subject to the order of this Honorable Court.

And I have given due notice to all persons claiming said property to be and appear before this District Court on the 4th day of October 1886 at 10 o'clock a. m. if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to make their claim and allegations in that behalf:—

And I have, as ordered by the said Court, caused said notice to be published, and the same has been published in the "Alaskan" a newspaper published at Sitka in said District, on the 4th day of September 1886 and in each issue of said newspaper subsequent thereto, until said 4th day of October 1886.

Sitka, Alaska, October 4th, 1886.

BARTON ATKINS,

Marshal, Dist. of Alaska.

On the same day was filed the following decree:

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF ALASKA,
UNITED STATES OF AMERICA.

UNITED STATES
vs.
THE SCHOONER "CAROLENA."

} No. 52.

The Marshal having returned on the monition issued to him in the above entitled action that in obedience thereto he has attached the said Schooner "Carolena," her tackle, apparel, boats, cargo and furniture and has given due notice to all persons claiming the same to appear before this Court on this 4th day of October 1886 at 10 o'clock A. M. at the District of

Alaska, United States of America, then and there to interpose their claims and make their allegations in that behalf; and W. Clark, Esq., Proctor for Munzie & Co., of Victoria, B. C., having heretofore filed a claim to all of said property on behalf of said Munzie & Co., the owners of said property, and no other persons having appeared and no claims or allegations having been made or filed herein by any other person or persons, and the usual proclamations having been made, and said cause having been heard upon the pleadings and proofs, M. D. Ball Esq. and W. H. Payson Esq. appearing as advocates for said libellant, and W. Clark Esq. as advocate for said Claimants; and said cause having been submitted to the Court for decision, and due deliberation being had in the premises, it is now ordered, sentenced and decreed as follows:

1st. That all persons whatsoever other than said Claimants be and they are hereby declared in contumacy and default.

2d. That said Schooner "Carolina" her tackle, apparel, boats and furniture and her cargo of 685 fur seal skins, 12 pup seal skins, and 1 hair seal skin and all other property found upon or appurtenant to said Schooner, be and the same are hereby condemned as forfeited to the use of the United States.

3rd. That unless an appeal be taken to this decree within the time limited and prescribed by law and the rules of Court the usual writ of *venditioni exponas* be issued to the Marshal commanding him to sell all the said property and bring the proceeds into this Court to be distributed according to law. Costs to be taxed are awarded against said Claimants.

Dated October 4th 1886.

LAFAYETTE LAWSON,
District Judge.

Done in open Court this 4th day of October 1886 at Sitka, District of Alaska, United States of America.

ANDREW T. LEWIS,
Clerk.

On the same day was filed the following motion to set aside decree.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

UNITED STATES
vs.
MUNZIE & CO. AND SCHOONER "CAROLINA."

Motion to set aside decree.

Now come W. Clark and D. A. Dingley, Proctors intervening for and in behalf of the Claimants herein, and move the Court to set aside the Decree rendered herein for the reason that the evidence produced on behalf of the United States is wholly insufficient upon which to base said Decree.

W. CLARK & D. A. DINGLEY,
Proctors for Claimants.

Which motion was overruled by the Court, and on the same day was filed the following Notice of Appeal.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

UNITED STATES <i>v.s.</i> MUNZIE & CO. AND SCHOONER "CARO- LENA."	} <i>Notice of Appeal.</i>
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And now come W. Clark & D. A. Dingley, Proctors for and in behalf of the claimants herein and notify this Honorable Court that they hereby appeal from the Decree rendered herein to the Circuit Court having appellate jurisdiction over this District and that said appeal is taken upon questions of law and fact, and pray the Court for an order on its Clerk to prepare a complete transcript of the record herein, as the law requires.

W. CLARK & D. A. DINGLEY,
Proctors for Claimants.

On the 9th day of February, 1887, was entered the following order :

IN THE MATTER OF THE UNITED STATES <i>v.s.</i>		
SCHOONER "ONWARD,"	No.	49.
" " "THORNTON,"	"	50.
" " "CAROLINA,"	"	51.
" " "SAN DIEGO,"	"	52.
ARMS & AMMUNITION SCHR. SIERRA, No. 57.		
ARMS & AMMUNITION SCHR. CITY OF SAN DIEGO, No. 58.		

In the above causes, upon motion of the Attorney for the United States and argument of counsel for the United States and for the interveners in said causes, and consideration by the Court, it is this day ordered that writs of *venditioni exponas* do issue from the Clerk of said Court to the Marshal of said District, for the sale of the attached vessels, with their tackle, cargoes and furniture of whatsoever description, and of the arms and ammunition attached in said causes, — And as to said attached vessels that the sale of the same (except the Schooner "San Diego," which shall be sold at Sitka) shall be made at Port Townsend in the District of Washington Territory, and as to the seal skins, part of the cargoes of said vessels attached, that sale of the same shall be made at San Francisco in the District of California, and that sale of said Schooner "San Diego," and all the other attached property be made at Sitka in the District of Alaska. Thirty days notice of such sales to be given at each of the places where the same are to be made, by posting such notice, or by publication in some newspaper published at such places respectively. And that said Marshal do have the moneys arising from such sales, together with the writ commanding the same, at a District Court of the United States for

this, the said District of Alaska, to be held on the first Monday in September, 1887, and that he then pay the same to the Clerk of said Court.

CLERK'S OFFICE U. S. DIST. COURT, DISTRICT OF ALASKA,
SITKA, *March 10, 1887.*

I, Andrew T. Lewis, Clerk of the United States District Court for the District of Alaska, do certify that the foregoing transcript of the record in the case of the United States *vs.* the Schooner "Carolena" her tackle, apparel, &c., on Libel of Information, pending in said Court, has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of said original record, except the full text of the exhibits referred to in the testimony therein, of which the purport only is stated, and that said purport of said exhibits is correctly stated, as the same appears of record at my office and in my custody.

Witness my hand and the seal of said Court the day and year above written.

[SEAL.]

ANDREW T. LEWIS,
Clerk.

No. 16.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *August 11, 1887.* [Rec'd Aug. 12.]

SIR:

I have the honor to inform you that Her Majesty's Government have received a telegram from the Commander-in-Chief of Her Majesty's naval forces in the Pacific dated Victoria, British Columbia, August 7th, reporting the seizure by United States cruisers of three British Columbian sealing schooners in Behring's Sea, a long distance from Sitka, and that several other vessels were in sight being towed in.

In conveying this information to you, I am requested at the same time by the Marquis of Salisbury to state that, in view of the assurances given in your note of the 3d of February last, Her Majesty's Government had assumed that pending the conclusion of discussions between the two governments on general questions involved, no further seizures would be made by order of the United States Government.

I have, &c.,

L. S. SACKVILLE WEST.

No. 17.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, *August 13, 1887.*

SIR:

I have the honor to acknowledge the receipt of your note of the 11th instant, received yesterday afternoon, informing me of a telegraphic communication from the Commander in Chief of Her Majesty's Naval Forces in the Pacific, dated at Victoria, British Columbia, August 7th, reporting

the seizure of three British Columbian Sealing Schooners "in Behring's Sea, a long distance from Sitka," and that "several other vessels were in sight being towed in."

The reference to my note to you of the 3d of February last, which you make under the instruction of the Marquis of Salisbury, has caused me to examine the expressions contained therein, and I can discover no ground whatever for the assumption by Her Majesty's Government that it contained assurances "that pending the conclusion of discussions between the two Governments on general questions involved, no further seizures would be made by order of the United States Government."

Until your note of the 11th instant was received, I had no information of the seizure of the sealing vessels therein referred to, and have no knowledge whatever of the circumstances under which such seizures have been made.

I shall at once endeavor to supply myself with the information necessary to enable me to reply to you more fully.

The cases of seizure referred to in my note of February 3, 1887, had occurred during the previous August, and upon the basis of the information then obtained, I wrote you as follows:

"In this connection I take the occasion to inform you that, without conclusion at this time of any questions which may be found to be involved in these cases of seizure, orders have been issued by the President's direction for the discontinuance of all pending proceedings, the discharge of the vessels referred to, and the release of all persons under arrest in connection therewith."

Having no reason to anticipate any other seizures, nothing was said in relation to the possibility of such an occurrence, nor do I find in our correspondence on the subject any grounds for such an understanding as you inform me had been assumed to exist, by Her Britannic Majesty's Government.

A short time since, when you called upon me and personally obtained copies of the record of the judicial proceedings in the three cases of seizure in August last in Behring Sea, nothing was said in relation to other cases. Whether the circumstances attendant upon the cases which you now report to me are the same as those which induced the Executive to direct the releases referred to, remains hereafter to be ascertained, and this with as little delay as the circumstances will permit.

I have, &c.,

T. F. BAYARD.

No. 18.

Sir L. S. Sackville West to Mr. Bayard.

BRITISH LEGATION,

WASHINGTON, *September 29, 1887.* [Rec'd Sept. 29.]

SIR:

I have the honor to inform you that Her Majesty's Government have been officially informed that the British vessels, mentioned in your note of the 3d of February last, have not been released, and that I am instructed to enquire the reason for the delay in complying with the orders sent to this effect, as stated in your above-mentioned note.

I have, &c.,

L. S. SACKVILLE WEST.

No. 19.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, *October 11, 1887.*

SIR:

I have the honor to acknowledge your note of the 29th ultimo, stating that Her Majesty's Government had been officially informed that the British vessels referred to in my note to you of the 3d of February last, had not been released, and asking the reason for the delay in complying with the orders of the Executive in that regard.

Upon receiving your note I at once wrote to my colleague, the Attorney-General, as the head of the Department of Justice, in order that I might be enabled to reply satisfactorily to your enquiry.

I am still without answer from him, which, when received, shall be promptly communicated to you.

In the meantime, in acknowledging your note, I take occasion to state my impression—that if the three vessels seized and ordered to be released have not been repossessed by their owners, it is not because of any hindrance on the part of any official of this Government, or failure to obey the order for release, but probably because of the remoteness of the locality (Sitka) where they were taken after arrest, for adjudication, and the proceedings having been *in rem*, the owners have not seen proper to proceed to Alaska and repossess themselves of the property in question.

Accept Sir, &c.,

T. F. BAYARD.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, 12 October, 1887. [Rec'd Oct. 13.]

SIR:

In connection with the representation which I was instructed to make to you respecting the seizure of the British Schooners "Onward," "Carolina," and "Thornton" by the United States cruiser "Corwin" in Behring's Sea, I have the honor to inform you that I am now further instructed to make similar representations in the cases of the British Columbian vessels "Grace," "Dolphin," and "W. P. Sayward," seized lately by the United States revenue cutter "Richard Rush," and at the same time, as in the cases of the "Onward," "Carolina," and "Thornton," to reserve all rights to compensation on behalf of the owners and crews.

I am also instructed to point out to you that according to the deposition of the mate of the "W. P. Sayward," copy of which is enclosed, no seals had been taken by her crew in Behring's Sea as is alleged in the libels of information filed on behalf of the United States District Attorney in the District Court of Alaska.

I have, &c.,

L. S. SACKVILLE WEST.

[ENCLOSURE IN No. 20.]

Deposition of Andrew Lang, mate of the schooner "W. P. Sayward."

DECLARATION.

I, Andrew Lang, of Victoria, mate of the British schooner "W. P. Sayward," do solemnly and sincerely declare:—

That I left Victoria, British Columbia, in the schooner "W. P. Sayward" on the 16th day of May, 1887, bound on a sealing voyage, with a crew of seven men and sixteen Indian hunters with eight canoes.

We commenced sealing off Cape Scott on the north of Vancouver Island, and killed 479 fur seals in the Pacific Ocean, and entered the Behring's Sea on 2 July, 1887, passing between Umnak Island and the Island of the Four Mountains. The weather was very thick and foggy and we did no sealing in Behring's Sea in consequence.

On the 9th July we were captured by the United States steamer "Richard Rush" being then from 30 to 40 miles off the nearest land. We were taken in tow to Unalakleet where we arrived on the 10th July, and they laid us alongside the steamer "St. Paul" belonging to the Alaska Commercial Co. They removed the sealskins and took them ashore to the wharf and put them in the Company's warehouse, and they resalted the skins with salt taken from our vessel. They put an officer from the "Rush" on board and towed us out to sea and told us to go to Sitka.

We arrived there on the 22nd July and on the next day an investigation was held before Judge Dawson, who bound us over to appear on the 22nd August for trial. The vessel was left in charge of the United States officers, and we were only allowed to remove our clothing. The Indians were left to find their way home as they could; they were about 700 miles from their villages.

I further say that when we were taken I spoke to the captain of the "Rush" and told him we had not taken a seal in Behring's Sea; he replied "I am sorry for you, I have to obey orders, and take everything I come across in Behring's Sea."

And I make this solemn declaration by virtue of the Act passed in the 37th year of Her Majesty's reign, entitled "An Act for the Suppression of Voluntary and Extra-judicial Oaths."

A. LANG.

Taken and declared before me at Victoria
this 8th day of August, 1887.

M. W. TYRWHITT DRAKE,

Notary Public.

No. 21.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,

WASHINGTON, *October 13, 1887.*

SIR:

Continuing my reply to your note of the 29th ultimo, inquiring the reason for the delay in complying with the order issued in January last for the release of British vessels seized last year in Behring Sea, I beg leave to inform you that I have this day received a communication from my colleague, the Attorney-General, informing me that his telegram to the United States Marshal at Sitka, of January 26th last, ordering the release of the British schooners "Onward," "Carolina," and "Thornton," owing to some misconception and mistake on the part of the official to whom it had been addressed, had not been acted upon.

A renewed order has gone forward for their release—as had been distinctly directed last January—and which I had no reason to doubt had been promptly obeyed.

In my note to you of the 11th inst., I stated it to be my impression that no hindrance to their repossession by the owners of the vessels named existed. This impression, it now appears, was not well-founded; and as my object is to give you the fullest information within my power in relation to all transactions touched in our correspondence, I hasten to communicate the latest report made to me from the Department of Justice.

I take leave also to express my regret that any misconception of the intentions and orders of the President should have delayed their prompt execution.

I have, &c.,

T. F. BAYARD.

No. 22.

Mr. Bayard to Sir L. S. Sackville West.

WASHINGTON, *October 13, 1887.*

SIR :

I have the honor to acknowledge your note of yesterday in relation to the cases of seizure of the British schooners "Onward," "Carolina," and "Thornton," in Behring Sea, by the United States revenue vessels, in August, 1886, and also your instructions to include by similar representations the cases of British Columbian vessels "Grace," "Dolphin," and "W. P. Sayward," seized by the United States revenue authorities in Behring Sea, with notification that Her Britannic Majesty's Government reserves all right to compensation on behalf of the owners and crews of the above-mentioned vessels.

The affidavit of the mate of the "W. P. Sayward" has been read, and the facts therein stated will be at once investigated.

I have, &c.,

T. F. BAYARD.

No. 23.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *October 19, 1887.* [Rec'd Oct. 21.]

Sir:

I have the honor to inform you that I am instructed by the Marquis of Salisbury, Her Majesty's Principal Secretary of State for Foreign Affairs, to protest against the seizure of the Canadian vessel "Alfred Adams," in Behring seas, and against the continuation of similar proceedings by the United States authorities on the high seas.

I have, &c.,

L. S. SACKVILLE WEST.

No. 24.

Mr. Bayard to Sir L. S. Sackville West.

WASHINGTON, October 22, 1887.

SIR:

I had the honor to receive last evening your note of the 19th instant, conveying the instruction to you by the Marquis of Salisbury that you should protest against the seizure of the Canadian vessel "Alfred Adams" in Behring's Sea, and against the continuance of similar proceedings by the United States authorities on the high seas; and I have the honor to be, &c.,

T. F. BAYARD.

No. 25.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, October 26, 1887. [Rec'd Oct. 27.]

SIR:

With reference to my note of the 19th instant, protesting against the seizure of the British schooner "Alfred Adams," I have the honor to transmit to you herewith copy of the report of the Canadian Minister of Marine and Fisheries and other papers relating thereto.

I have, &c.,

L. S. SACKVILLE WEST.

[ENCLOSURE 1 IN NO. 25.]

Report of Geo. E. Foster, Canadian Minister of Marine and Fisheries.

DEPARTMENT OF FISHERIES—CANADA.

OTTAWA, 15th September, 1887.

With reference to previous correspondence concerning the seizure and detention of Canadian Sealing Vessels by the United States' authorities in Behring Sea, the Minister of Marine and Fisheries begs to submit for the consideration of His Excellency the Governor General in Council, the following papers:

- (a) A letter from Collector Hamley, of Victoria, B. C., dated September 1st, 1887, enclosing certain papers in reference to the seizure of the Canadian sealing schooner "Alfred Adams" in Behring Sea;

- (b) The declaration of William Henry Dyer, of Victoria, B. C., Master of the Canadian schooner "Alfred Adams";
- (c) A certificate of seizure of the "Alfred Adams" signed by L. G. Shepard, Captain of the United States Revenue Steamer "Rush";
- (d) A sealed and unopened letter directed to the United States District Attorney and United States Marshal, Sitka, Alaska;
- (e) A letter from Collector Hamley, of Victoria, B. C., dated July 26th, relating to the detention of the Canadian schooners "Onward," "Carolina," and "Thornton," seized in August, 1886, by the United States Cutter "Corwin" in Behring Sea;
- (f) Copy of a telegram and order purporting to be from the United States Attorney General and Judge Dawson respectively relating to the release of the above named vessels, and
- (g) A letter dated September 3rd, 1887, from the law firm of Drake, Jackson & Helmcken, of Victoria, containing additional information relating to the same.

From the above mentioned papers it appears that on the 6th August, 1887, the Canadian schooner "Alfred Adams," whilst engaged in catching seals in the open sea more than fifty miles distant from the nearest land was forcibly seized by an armed vessel of the United States, her ships papers taken, her cargo of seal skins, thirteen hundred and eighty-six (1386) in number, together with all her arms, ammunition and fishing implements transferred to the United States Cutter, and her Captain ordered to proceed with sealed orders to Sitka, and to deliver himself, his vessel and men, into the hand of the United States Marshal at that place.

This treatment of the "Alfred Adams" whilst peaceably pursuing her lawful calling on the high seas, is but a repetition of the unjustifiable seizures of Canadian vessels made by the United States authorities in Behring's Sea, and which have been dealt with at length in previous reports to Council.

The Minister, therefore, does not consider it necessary in this instance to traverse the ground already so fully covered, and recommends that a copy of this report with the papers attached be forwarded to Her Majesty's Government for their earnest and immediate consideration, and that a copy thereof be sent to the British Minister at Washington, together with the sealed letter given by Captain Shepard to the Master of the "Adams," with the request that it be forwarded to Mr. Secretary Bayard. With reference to the attached papers E. F. & G., the Minister observes that from the first (f) it appears that enquiries made by the Collector of Customs at Victoria, B. C., in July last, resulted in his obtaining the information that Judge Dawson had up to that date, received no orders for the release of the Canadian sealing vessels seized in 1886, that the vessels had not been sold and remained still under seizure, and that Judge Dawson, when questioned as to the report that a telegram had been sent to him by the Attorney-General of the United States ordering the release of the vessels, had replied that he had heard of this report before, but that nothing of the kind had reached either himself or the United States Marshal at Sitka. The paper marked F. purports to be a copy of a telegram dated January 26th, 1887, from the United States Attorney-General Garland to Judge Dawson ordering him to release the vessels seized in August preceding, and of an order founded thereon from Judge Dawson to the United States Marshal at Sitka bearing date February 19th, 1887, directing him to "release the 'Carolina,' 'Onward,' 'Thornton,' and 'San Diego,' together with all their tackle, apparel,

skins, guns, ammunition, small boats and everything pertaining to said vessels." The third paper marked G. is a copy of a letter from the law firm of Drake, Jackson & Helmcken, of Victoria, B. C., to the Minister of Justice, informing him that they are advised that a telegram was received by Judge Dawson from the United States Attorney-General ordering the release of the vessels above referred to; that Judge Dawson did issue an order accordingly, but that he afterwards rescinded the order on the assumption that the telegram was a forgery and that since "no official letters of any sort either confirming the telegram or respecting the affair has been received at Sitka."

The Minister observes that if the information conveyed in the above-mentioned papers is correct, of which there appears no reasonable doubt, it reveals a state of affairs by no means satisfactory.

On the 3d of February, 1887, Mr. Secretary Bayard informed the British Minister at Washington that "orders have been issued by the President's direction for the discontinuance of all pending proceedings, the discharge of the vessels referred to and the release of all persons under arrest in connection therewith." The telegram in accordance with Mr. Bayard's communication appears to have been sent to Alaska, and an order based thereon to have been issued by the District Judge, but to have been afterwards rescinded, and no further action has been taken up to date of latest information. Meanwhile the vessels remain under seizure, the seal skins are forfeited, and the property of Canadian citizens forcibly withheld from them under circumstances which involve very great loss and damage.

The Minister further observes that with a view of guiding the action of Canadian citizens interested in sealing in the northern seas, repeated attempts were made previous to the commencement of the present season to obtain an official expression from the United States Government of the policy they proposed to pursue in their treatment of foreign vessels sealing in Behring Sea, but that these efforts proved altogether unavailing. From Mr. Bayard's communication of February 3d, 1887, above referred to, the fair inference, however, was to be drawn that until the question in dispute between the two Governments as to the legality of the previous seizures had been finally disposed of, no further seizures would be made. And there is no doubt that on the strength of this communication, and in the absence of any explicit statement of policy to the contrary, Canadian citizens did, in the beginning of the present season, embark upon their customary sealing expeditions to Behring Sea, under the reasonable impression that they would not be interfered with by the United States authorities so long as they conducted their operations in the open sea; only, however, to find their vessels seized, their property confiscated and their ventures completely ruined.

It is respectfully submitted that this condition of affairs is in the highest degree detrimental to the interests of Canada, and should not be permitted to continue. For nearly two years Canadian vessels have been exposed to arbitrary seizure and confiscation in the pursuit of a lawful occupation upon the high seas, and Canadian citizens subjected to imprisonment and serious financial loss, while an important and remunerative Canadian industry has been threatened with absolute ruin. This course of action has been pursued by United States officers in opposition to the contention in the past of their Government in regard to the waters in which these seizures have taken place, in violation of the plainest dictates of International law and in the face of repeated and vigorous protests of both the Canadian and British Governments.

The Minister advises that Her Majesty's Government be again asked to give its serious and immediate attention to the repeated remonstrances of

the Canadian Government against the unwarrantable action of the United States in respect to Canadian vessels in Behring Sea, with a view to obtain a speedy recognition of its just rights and full reparation for the losses sustained by its citizens.

The whole respectfully submitted,

GEO. E. FOSTER,

Minister of Marine and Fisheries.

[ENCLOSURE 2 IN NO. 25.]

Mr. Hamley to Mr. Foster.

CUSTOM HOUSE, VICTORIA, 26 July, 1887.

DEAR SIR:

Captain Carrol, Master of the American steamer Olympian has been taking parties of excursionists to Sitka and I asked him to see the Judge, Mr. Dawson, and find out something we could trust respecting the seized vessels. Dawson told him he had received no orders whatever for the release of the vessels—they have not been sold—and remain as they were, under seizure. Captain Carrol told Dawson of the telegram dated last January, purporting to have been sent by Mr. Garland, Attorney-General at Washington, in the President's name, ordering the vessels to be released. Dawson said he had heard of it before and that it must have been as he termed it, a "put up thing," as nothing of the kind had reached either himself or the U. S. Marshal at Sitka.

The serious part is that our people, trusting to the story of the order for release, have sent 13 vessels again this year to the sealing grounds. One has been seized already and if the others fall in the way of the Revenue Cutters they will probably be seized also. I may perhaps learn something more from the Admiral when he returns from Alaska, and if so I will write to you again.

Yours very truly,

W. HAMLEY.

[ENCLOSURE 3 IN NO. 25.—COPY OF TELEGRAM.]

WASHINGTON, D. C., January 26th, 1887.

To Judge Lafayette Dawson and M. D. Ball,
U. S. District Attorney, Sitka, Alaska.

I am directed by the President to instruct you to discontinue any further proceedings in the matter of the seizure of the British vessels "Carolina," "Onward," and "Thornton," and discharge all vessels now held under such seizure and release all persons that may be under arrest in connection therewith.

A. H. GARLAND,

Attorney-General.

[ENCLOSURE 4 IN No. 25—COPY OF ORDER.]

To Barton Atkins, United States Marshal for the District of Alaska.

You are hereby directed to release the vessels "Carolina," "Onward," "Thornton," and "San Diego," which were seized in Behring Sea for violation of section (1956) U. S. Statutes, together with their tackle, apparel, *skins*, guns, ammunition, small boats, and everything pertaining to said vessels this 19th day of February, 1887.

LAFAYETTE DAWSON,

District Judge, District of Alaska.

[ENCLOSURE 5 IN No. 25.]

Mr. Hamley to Mr. Foster.

CUSTOM HOUSE, VICTORIA, 1 September, 1887.

SIR:

On the 7th of August the Master of the United States Revenue Cutter "Rush" seized in Behring Sea, 60 miles from any land, the Canadian schooner "Alfred Adams." Her register, clearance, guns and ammunition and the seal skins she had taken, 1386, were all taken from her and the vessel herself ordered to Sitka. No one from the revenue Cutter was put on board by Capt. Shepard, and the Master of the "Alfred Adams," instead of going as he was ordered to Sitka, returned to Victoria, arriving here Aug. 31. I forward the Master's deposition before a Notary Public, and what Capt. Shepard is pleased to term, a certificate of the schooner's seizure, by himself. Mr. Drake, a Solicitor, is at Sitka waiting for the cases to be heard in Court. The trial was delayed for the arrival of the "Rush," and she was expected about the beginning of this month. Mr. Drake will no doubt report to the Minister of Justice.

I have, &c.,

W. HAMLEY.

I also enclose a sealed letter addressed by Capt. Shepard to the District Attorney and United States Marshal at Sitka, which the Master of the "Alfred Adams" brought down with him and which you can deal with in any way you think fit.

W. HAMLEY.

[ENCLOSURE 6 IN No. 25.]

Certificate of Seizure of the "Alfred Adams."

U. S. REVENUE STEAMER "RUSH,"

BEHRING SEA, August 6, 1887.

TO WHOM IT MAY CONCERN:

This will certify that I have this day seized the British schooner "Alfred Adams," of Victoria, B. C., Capt. W. H. Dyer, Master, for violation of law, and have taken charge of his ship's papers, viz.: Register, shipping articles, clearance, bill of health and log book; also her arms and seal skins.

Very respectfully,

L. G. SHEPARD,

Captain U. S. R. M.

In the Matter of the Seizure of the Sealing Schooner "Alfred Adams," by the United States Revenue Cutter "Richard Rush."

I, William Henry Dyer, of Victoria, B. C., Master Mariner, do solemnly and sincerely declare that—

1. I am the Master of the schooner "Alfred Adams," of the port of Victoria, British Columbia, engaged in the business of catching seals. On the 6th of August, 1887, while on board the said schooner and in command of the same, being in latitude $54^{\circ} 48'$ north, and longitude $167^{\circ} 49'$ west, the United States Revenue Cutter "Richard Rush" steamed alongside, lowered a boat commanded by the First Lieutenant and boat's crew. The said Lieutenant came on board the said "Alfred Adams" and ordered me to take the ship's register, log book, articles and all others of the ship's papers on board the "Richard Rush." In obedience to his command I took all said papers and accompanied the said Lieutenant on board the "Rush." When I arrived on board the "Rush" the Captain of the "Rush" asked me what was my business in the Behring Sea. I replied, taking seals. He enquired how many skins I had; I replied, 1386. He then said he would seize the ship, take the skins, arms, ammunition and spears. I stated I did not think the ship was liable to seizure as we had never taken a seal within 60 miles of Ounalaska nor nearer St. Paul's than 60 miles south of it, and that we had never been notified that the waters were prohibited unless landing and taking them from the island of St. Paul. He stated he must obey the orders of his Government, and that our Government and his must settle the matter, and ordered me to proceed on board the said schooner and deliver up my arms, ammunition, and skins and spears. He sent two boats belonging to the "Rush," in charge of the First and Second Lieutenants of the "Rush" respectively, and manned with sailors from the "Rush," who came on board the said schooner. (I returned in company with the First Lieutenant.) They took from the said schooner 1386 (thirteen hundred and eighty-six) skins, 4 kegs powder (3 triple F and 1 blasting powder), 500 shells, 3 cases caps and primers, 9 breach-loading double-barreled shot guns, 1 Winchester rifle, all in good order, and 12 Indian spears, and he then gave me a sealed letter addressed to the United States Marshal and U. S. District Attorney at Sitka. He also gave me an acknowledgement of the goods taken, and also gave me a certificate that the said schooner was under seizure, and after being alongside for about $3\frac{1}{2}$ hours I received orders in writing to proceed to Sitka and report to the United States District Attorney and Marshal. We then parted company. My crew consisted of myself, mate, 2 seamen, 1 Chinese cook and 21 Indians. Previous to the said seizure we had spoken the schooner "Kate," of Victoria, and had been informed by the mate of that vessel that the crews (and particularly the Indians) taken to Sitka on schooners previously seized had been very badly treated. The Indians became very mutinous on learning that we were to proceed to Sitka and report to the United States authorities and declared they would not go to Sitka, and to avoid trouble I came to Victoria instead of going to Sitka. I arrived in Victoria on the 31st of August, 1887, at about 7 p. m.

And I make this solemn declaration conscientiously, believing the same to be true, and by virtue of the Oaths Ordinance, 1869.

W. H. DYER.

Declared before me this 1st day of September, A. D. 1887, at Victoria, British Columbia.

H. DALLAS HELMCKEN,

A Notary Public in and for the Province of British Columbia.

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[ENCLOSURE 8 IN No. 25.]

Messrs. Drake, Jackson and Helmcken to Mr. Thompson.

VICTORIA, B. C., September 3, 1887.

SIR:

We have the honor to inform you that we are in receipt of a letter from our Mr. Drake written from Sitka, under date August 25th in which he states that a telegram was received at Sitka, relative to the Schooners seized last year, from the United States Attorney General-Garland directing their release and discharge of the men. The Judge gave an order accordingly which was afterwards rescinded on the assumption that the telegram was a forgery. No official letter of any sort either confirming the telegram or respecting the affair has been received at Sitka. The schooners now seized and at Sitka are the "Anna Beck," "W. P. Sayward," "Dolphin," and "Grace." The "Alfred Adams" was also seized. The trial of the present men, Mr. Drake states, would not take place until after the arrival of the Revenue Cutter "Rush;" also that judging from the past and the views held by the Court the result would most probably be the same and urges that immediate steps should be taken to prevent the imprisonment of the Masters, and that he would obtain declarations from the Masters duly certified, and enter a protest at the trial. The "Rush" was not expected at Sitka until yesterday.

Regarding the seizure of the "Alfred Adams," we have to state that that schooner has arrived here safely. The declarations of her Captain, Capt. Dyer, and his men have been duly taken, which her owners, Messrs. Guttman and Frank, of this City yesterday handed to Hon. Mr. Stanley, Collector of Customs, together with a sealed letter which the commander of the "Rush" handed to Captain Dyer to be delivered to the District Attorney at Sitka. These papers no doubt Mr. Stanley has already forwarded to the proper Department.

We have since forwarded a copy of this information to the Right Honorable Sir John A. Macdonald, K. C. B., &c.

• We have, &c.,

DRAKE, JACKSON & HELMCKEN.

[ENCLOSURE 9 IN No. 25.]

Mr. Burbidge to Mr. Hardie.

DEPARTMENT OF JUSTICE—CANADA.

OTTAWA, 12th September, 1887.

SIR:

I have the honor to enclose for your information a copy of a letter which has been received by the Minister of Justice from Messrs. Drake, Jackson & Helmcken in which they report with reference to the sealing vessels which have been seized in the Behring Sea by the United States authorities.

I am to state that the Minister of Justice has taken no action with respect to this communication, but that he is of the opinion that the Minister of Marine and Fisheries should at his earliest convenience take steps to communicate the substance thereof to the Colonial Office and to the British Minister at Washington.

I have, &c.,

GEORGE W. BURBIDGE, D. M. J.

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PART II.

PRIOR CORRESPONDENCE RELATIVE TO THE RIGHTS OF THE SOVEREIGN OF ALASKA.

It is evident that whatever rights the United States have over the Territory of Alaska and the waters adjacent thereto have been derived from Russia. It is necessary, therefore, to trace the history of the relation of the United States to the Russian possessions on that coast prior to the cession of Alaska to the United States in 1867. The following papers and extracts tend to explain that relation.

No. 26.

Mr. Poletica to Mr. Adams.

[TRANSLATION.]

WASHINGTON, *January 30*, [Feb. 11,] 1822.

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias, in consequence of orders which have lately reached him, hastens herewith to transmit to Mr. Adams, Secretary of State in the Department of Foreign Affairs, a printed copy of the regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relative to foreign commerce in the waters bordering the establishments of the said company on the northwest coast of America.

The undersigned conceives it to be, moreover, his duty to inform Mr. Adams that the Imperial Government, in adopting the regulation, supposes that a foreign ship, which shall have sailed from a European port after the 1st of March, 1822, or from one of the ports of the United States after the 1st of July of the same year, cannot lawfully pretend ignorance of these new measures.

The undersigned, &c.,

PIERRE DE POLETICA.

M. J.

Edict of His Imperial Majesty, Autocrat of all the Russias.

The Directing Senate maketh known unto all men:

Whereas in an edict of His Imperial Majesty, issued to the Directing Senate on the 4th day of September, and signed by His Majesty's own hand, it is thus expressed:

"Observing, from reports submitted to us, that the trade of our subjects on the Aleutian islands, and on the northwest coast of America, appertaining unto Russia, is subject, because of secret and illicit traffic, to oppression and impediments; and finding that the principal cause of these difficulties is the want of rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the whole of the eastern coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific regulations, which are hereto attached.

"In forwarding these regulations to the Directing Senate, we command that the same be published for universal information, and that the proper measures be taken to carry them into execution."

COUNT D. GURIEF,

Minister of Finances.

It is therefore decreed by the Directing Senate that His Imperial Majesty's edict be published for the information of all men, and that the same be obeyed by all whom it may concern.

[The original is signed by the Directing Senate.]

Printed at St. Petersburg. In the Senate, September 7, 1821.

[On the original is written, in the handwriting of His Imperial Majesty, thus:]

Be it accordingly,

ALEXANDER.

KAMENNOY OSTROFF, September 4, 1821.

[ENCLOSURE II IN No. 26.]

Rules established for the limits of navigation and order of communication along the coast of the Eastern Siberia, the northwestern coast of America, and the Aleutian, Kurile, and other islands.

SEC. 1. The pursuits of commerce, whaling, and fishing, and of all other industry, on all islands, ports, and gulfs, including the whole of the northwest coast of America, beginning from Behring's Strait to the fifty-first degree of northern latitude, also from the Aleutian islands to the eastern coast of Siberia, as well as along the Kurile islands from Behring's Strait to the south cape of the island of Urup, viz., to 45° 50' northern latitude, are exclusively granted to Russian subjects.

SEC. 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than a hundred Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo.

SEC. 3. An exception to this rule is to be made in favor of vessels carried thither by heavy gales, or real want of provisions, and unable to make any other shores but such as belong to Russia; in these cases, they are obliged to produce convincing proofs of actual reason for such an exception. Ships of friendly governments, merely on discoveries, are likewise exempt from the foregoing rule (section 2). In this case, however, they must previously be provided with passports from the Russian Minister of the Navy.

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No 27.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,

WASHINGTON, *February 25, 1822.*

SIR:

I have the honor of receiving your note of the 11th instant, enclosing a printed copy of the regulations adopted by the Russian American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that company upon the northwest coast of America.

I am directed by the President of the United States to inform you that he has seen with surprise, in this edict, the assertion of a territorial claim on the part of Russia, extending to the fifty-first degree of north latitude on this continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within one hundred Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any act which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This ordinance affects so deeply the rights of the United States and of their citizens, that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations contained in it.

I avail, &c.,

JOHN QUINCY ADAMS.

No. 28.

Mr. Poletica to Mr. Adams.

Mr. Poletica replied on the 28th of the same month, and after giving a summary of historical incidents which seemed to him to establish the title of Russia to the territories in question by first discovery, said—

“I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the northwest coast of America belonging to Russia within the distance

of at least one hundred Italian miles. This measure however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

"The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that diplomatic missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. * * *

"I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring's Strait to the fifty-first degree of north latitude, and on the opposite side of Asia, and the islands adjacent, from the same strait to the forty-fifth degree. The extent of sea, of which these possessions form the limits, comprehends all the conditions which are ordinarily attached to *shut seas* (mers fermées), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereign and especially that of entirely interdicting the entrance of foreigners. It preferred only asserting its essential rights, without taking any advantage of localities."

No. 29.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,

WASHINGTON, March 30, 1822.

SIR:

I have had the honor of receiving your letter of the 28th ultimo, which has been submitted to the consideration of the President of the United States.

From the deduction which it contains of the grounds upon which articles of regulation of the Russian American Company have now, for the first time, extended the claim of Russia on the northwest coast of America to the fifty-first degree of north latitude, its only foundation appears to be the existence of the small settlement of Novo Archangelsk, situated, not on the American continent, but upon a small island in latitude 57°; and the principle upon which you state that this claim is now advanced is, that the fifty-first degree is equidistant from the settlement of Novo Archangelsk and the establishment of the United States at the mouth of the Columbia river. But, from the same

statement, it appears that, in the year 1799, the limits prescribed by the Emperor Paul to the Russian American Company were fixed at the fifty-fifth degree of latitude, and that, in assuming now the latitude 57° , a new pretension is asserted, to which no settlement made since the year 1799 has given the color of a sanction.

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within one hundred Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than ninety degrees of longitude, or four thousand miles.

As little can the United States accede to the justice of the reason assigned for the prohibition above mentioned. The right of the citizens of the United States to hold commerce with the aboriginal natives of the northwest coast of America, without the territorial jurisdiction of other nations, even in arms and munitions of war, is as clear and indisputable as that of navigating the seas. That right has never been exercised in a spirit unfriendly to Russia; and although general complaints have occasionally been made on the subject of this commerce by some of your predecessors, no specific ground of charge has ever been alleged by them of any transaction in it which the United States were, by the ordinary laws and usages of nations, bound either to restrain or to punish. Had any such charge been made, it would have received the most pointed attention of this Government, with the sincerest and firmest disposition to perform every act and obligation of justice to yours which could have been required. I am commanded by the President of the United States to assure you that this disposition will continue to be entertained, together with the earnest desire that the most harmonious relations between the two countries may be preserved.

Relying upon the assurance in your note of similar dispositions reciprocally entertained by His Imperial Majesty towards the United States, the President is persuaded that the citizens of this Union will remain unmolested in the prosecution of their lawful commerce, and that no effect will be given to an interdiction manifestly incompatible with their rights.

I am, &c.,

JOHN QUINCY ADAMS.

No. 30.

Mr. Poletica to Mr. Adams.

Mr. Poletica replied on the 2nd of April following, and after again endeavoring to prove the title of Russia to the northwest coast of America from Behring's straits to the fifty-first degree of north latitude, said :

"In the same manner the great extent of the Pacific ocean at the fifty-first degree of latitude cannot invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

"As to the right claimed for the citizens of the United States of trading with the natives of the country of the northwest coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I cannot dissemble, sir, that this same trade beyond the fifty-first degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian American Company in their absolute integrity.

"I shall not finish this letter without repeating to you, sir, the very positive assurance which I have already had the honor once of expressing to you, that, in every case where the American Government shall judge it necessary to make explanations to that of the Emperor, the President of the United States may rest assured that these explanations will always be attended to by the Emperor, my august sovereign, with the most friendly, and consequently, the most conciliatory dispositions."

No. 31.

Baron Tuyll to Mr. Adams.

[TRANSLATION.]

WASHINGTON, *April 12 (24), 1823.*

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias near the United States of America, has had the honor to express to Mr. Adams, Secretary of State, the desire of the Emperor, his master, who is ever animated by a sincere friendship towards the United States, to see the discussions that have arisen between the cabinets of St. Petersburg and Washington, upon some provisions contained in the ukase of the 4th (16th) of September, 1821, relative to the Russian possessions on the northwest coast of America, terminated by means of a friendly negotiation.

These views of His Imperial Majesty coincide with the wish expressed some time since on the part of the United States in regard to a settlement of limits on the said coast.

The ministry of the Emperor having induced the British ministry to furnish Sir Charles Bagot, ambassador of His Majesty the King of England near His Imperial Majesty, with full powers necessary for the negotiation about to be set on foot for reconciling the difficulties existing between the two courts on the subject of the northwest coast, the English Government is desirous of acceding to that invitation.

The undersigned has been directed to communicate to Mr. Adams, Secretary of State, in the name of his august master, and as an additional proof of the sentiments entertained by His Imperial Majesty towards the President of the United States and the American Government, the expression of his desire that Mr. Middleton be also furnished with the necessary powers to terminate with the Imperial cabinet, by an arrangement founded on the principle of mutual convenience, all the differences that have arisen between Russia and the United States in consequence of the law published September 4 (16), 1821.

The undersigned thinks he may hope that the cabinet of Washington will, with pleasure, accede to a proposition tending to facilitate the completion of an arrangement based upon sentiments of mutual good will and of a nature to secure the interests of both countries.

He profits, &c.,

TUYLL.

No. 32.

Mr. Adams to Baron Tuyl.

DEPARTMENT OF STATE.

WASHINGTON, May 7, 1823.

The undersigned, Secretary of State of the United States, has submitted to the consideration of the President the note which he had the honor of receiving from the Baron de Tuyl, Envoy Extraordinary and Minister Plenipotentiary from His Imperial Majesty the Emperor of all the Russias, dated the 12th (24th) of the last month.

The undersigned has been directed, in answer to that note, to assure the Baron de Tuyl of the warm satisfaction with which the President receives and appreciates the friendly dispositions of His Imperial Majesty towards the United States; dispositions which it has been; and is, the earnest desire of the American Government to meet with corresponding returns, and which have been long cemented by the invariable friendship and cordiality which have subsisted between the United States and His Imperial Majesty.

Penetrated with these sentiments, and anxiously seeking to promote their perpetuation, the President readily accedes to the proposal that the minister

of the United States at the court of his Imperial Majesty should be furnished with powers for negotiating, upon principles adapted to those sentiments, the adjustment of the interests and rights which have been brought into collision upon the northwest coast of America, and which have heretofore formed a subject of correspondence between the two Governments, as well at Washington as at St. Petersburg.

The undersigned is further commanded to add that, in pursuing, for the adjustment of the interests in question, this course, equally congenial to the friendly feelings of this nation towards Russia and to their reliance upon the justice and magnanimity of His Imperial Majesty, the President of the United States confides that the arrangements of the cabinet of St. Petersburg will have suspended the possibility of any consequences resulting from the ukase to which the Baron de Tuyl's note refers which could affect the just rights and the lawful commerce of the United States during the amicable discussion of the subject between the Governments respectively interested in it.

The undersigned, &c.,

JOHN QUINCY ADAMS.

No. 33.

Mr. Adams to Mr. Middleton.

[No. 16.]

DEPARTMENT OF STATE,

WASHINGTON, July 22, 1823.

SIR:

I have the honor of enclosing, herewith, copies of a note from Baron de Tuyl, the Russian minister, recently arrived, proposing, on the part of His Majesty, the Emperor of Russia, that a power should be transmitted to you to enter upon a negotiation with the ministers of his Government concerning the differences which have arisen from the imperial ukase of 4th (16th) September, 1811, relative to the northwest coast of America, and of the answer from this Department acceding to this proposal. A full power is accordingly inclosed, and you will consider this letter as communicating to you the President's instructions for the conduct of the negotiation.

From the tenor of the ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude, on the Asiatic coast, to the latitude of fifty-one north on the western coast of the American Continent; and they assume the right of interdicting the *navigation* and the fishery of all other nations to the extent of one hundred miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions

of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain *islands* north of the fifty-fifth degree of latitude, and have no existence on the continent of America.

The correspondence between Mr. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the ukase itself had already done in England. I inclose herewith the *North American Review* for October, 1822, No. 37, which contains an article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the 52nd number of the *Quarterly Review*, the article upon Lieutenant Kotzebue's voyages. From the article in the *North American Review* it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by Mr. Poletica, are all without foundation in fact.

* * * * *

The right of the United States from the forty-second to the forty-ninth parallel of latitude on the Pacific Ocean we consider as unquestionable, being founded, first on the acquisition, by the treaty of February 22, 1819, of all the rights of Spain; second, by the discovery of the Columbia river, first from sea, at its mouth, and then by land, by Lewis and Clarke; and third, by the settlement at its mouth in 1811. This territory is to the United States of an importance which no possession in North America can be to any European nation, not only as it is but the continuity of their possessions from the Atlantic to the Pacific Ocean, but as it offers their inhabitants the means of establishing hereafter water communications from the one to the other.

It is not conceivable that any possession upon the continent of North America should be of use or importance to Russia for any other purpose than that of traffic with the natives. This was, in fact, the inducement to the formation of the Russian American Company and to the charter granted them by the Emperor Paul. It was the inducement to the ukase of the Emperor Alexander. By offering free and equal access for a term of years to navigation and intercourse with the natives to Russia, within the limits to which our claims are indisputable, we concede much more than we obtain. It is not to be doubted that, long before the expiration of that time, our settlement at the mouth of the Columbia river will become so considerable as to offer means of useful commercial intercourse with the Russian settlements on the islands of the northwest coast.

With regard to the territorial claim, separate from the right of traffic with the natives and from any system of colonial exclusions, we are willing to agree to the boundary line within which the Emperor Paul had granted exclusive privileges to the Russian American Company, that is to say, latitude 55°.

If the Russian Government apprehend serious inconvenience from the illicit traffic of foreigners with their settlements on the northwest coast, it may be effectually guarded against by stipulations similar to those, a draft of which is herewith subjoined, and to which you are authorized, on the part of the United States to agree. * * * *

I am, &c.,

JOHN QUINCY ADAMS.

[ENCLOSURE IN MR. ADAMS' NO. 16.]

Draft of Treaty between the United States and Russia.

ARTICLE I. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the contracting parties, it is agreed that their respective citizens and subjects shall not be disturbed or molested, either in navigating or in carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country; subject, nevertheless, to the restrictions and provisions specified in the two following articles.

ARTICLE II. To the end that the navigation and fishery of the citizens and subjects of the contracting parties, respectively, in the Pacific Ocean or in the South Seas, may not be made a pretext for illicit trade with their respective settlements, it is agreed that the citizens of the United States shall not land on any part of the coast actually occupied by Russian settlements, unless by permission of the Governor or commander thereof, and that Russian subjects shall, in like manner, be interdicted from landing without permission at any settlement of the United States on the said northwest coast.

ARTICLE III. It is agreed that no settlement shall be made hereafter on the northwest coast of America by citizens of the United States or under their authority, north, nor by Russian subjects, or under the authority of Russia, south of the fifty-fifth degree of north latitude.

No. 34.

Mr. Adams to Mr. Rush.

[No. 70.]

DEPARTMENT OF STATE,

WASHINGTON, July 22, 1823.

SIR:

Among the subjects of negotiation with Great Britain which are pressing upon the attention of this Government is the present condition of the northwest coast of this continent. This interest is connected, in a manner becoming from day to day more important, with our territorial rights; with the whole system of our intercourse with the Indian tribes; with the boundary relations between us and the British North American dominions; with the fur trade; the fisheries in the Pacific Ocean; the commerce with the Sandwich Islands and China; with our boundary upon Mexico; and, lastly, with our political standing and intercourse with the Russian empire. * * *

By the ukase of the Emperor Alexander, of the 4th (16th) of September, 1821, an exclusive territorial right on the northwest coast of America is asserted as belonging to Russia, and as extending from the northern extremity of the continent to latitude 51° , and the navigation and fishery of all other nations are interdicted by the same ukase to the extent of one hundred Italian miles from the coast.

When Mr. Poletica, the late Russian minister here, was called upon to set forth the grounds of right conformable to the laws of nations which authorized the issuing of this decree, he answered in his letters of February 28 and April 2, 1822, by alleging first discovery, occupancy, and uninterrupted possession. * * * * *

The United States and Great Britain have both protested against the Russian Imperial ukase of September 4, (16,) 1821.

At the proposal of the Russian Government, a full power and instructions are now transmitted to Mr. Middleton, for the adjustment, by amicable negotiation, of the conflicting claims of the parties on this subject.

We have been informed by the Baron de Tuyll that a similar authority has been given on the part of the British Government to Sir Charles Bagot. * *

The principles settled by the Nootka Sound convention of October 28, 1790, were—

1st. That the rights of fishery in the South Seas, of trading with the natives of the northwest coast of America, and of making settlements on the coast itself for the purposes of that trade, north of the *actual* settlements of Spain, were common to all the European nations, and of course to the United States.

2nd. That so far as the actual settlements of Spain had extended, she possessed the exclusive rights, territorial, and of navigation and fishery, extending to the distance of ten miles from the *coasts so actually occupied*.

3rd. That on the coasts of *South America*, and the adjacent islands *south* of the parts already occupied by Spain, no settlement should thereafter be made either by British or Spanish subjects, but on both sides should be retained the liberty of landing and of erecting temporary buildings for the purposes of the fishery. These rights were, also, of course, enjoyed by the people of the United States.

The exclusive rights of Spain to any part of the American continents have ceased. That portion of the convention, therefore, which recognizes the exclusive colonial rights of Spain on these continents, though confirmed as between Great Britain and Spain, by the first additional article to the treaty of the 5th of July, 1814, has been extinguished by the fact of the independence of the South American nation and of Mexico. Those independent nations will possess the rights incident to that condition, and their territories will, of course, be subject to no exclusive right of navigation in their vicinity, or of access to them by any foreign nation. * * * * *

The right of carrying on trade with the natives throughout the northwest coast they [the United States] cannot renounce. With the Russian settlements at Kodiak, or at New Archangel, they may fairly claim the advantage

of a free trade, having so long enjoyed it unmolested, and because it has been and would continue to be as advantageous at least to those settlements as to them. But they will not contest the right of Russia to prohibit the traffic, as strictly confined to the Russian settlement itself, and not extending to the original natives of the coast. * * * * *

I am, &c.,

JOHN QUINCY ADAMS.

No. 35.

Mr. Middleton to Mr. Adams.

In Mr. Middleton's despatch No. 35, of the 19th of April, 1824, are enclosed minutes of the conferences that preceded the signature of the treaty.

The first conference took place on the 9th of the preceding February, and Mr. Middleton submitted the following draft of a convention:

"ARTICLE I. In order to strengthen the bonds of friendship and to preserve in future a perfect harmony and good understanding between the high contracting parties, it is agreed that their respective citizens and subjects shall not be disturbed or molested, either in navigating or in carrying on their fisheries in any part of the great ocean vulgarly called the Pacific or South Sea, or in landing on the coasts thereof in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, subject nevertheless to the restrictions and provisions specified in the following articles.

"ARTICLE II. To the end that the navigation and fisheries in the great ocean carried on by citizens and subjects of the high contracting parties may not be made a pretext for illicit trade with their respective settlements, it is agreed that the citizens of the United States shall not land on any part of the coast actually occupied by Russian settlements, unless by permission of the Governor or commandant thereof; and that Russian subjects shall, in like manner, be interdicted from landing without permission at any settlement of the United States on the northwest coast.

"ARTICLE III. It is further agreed that no settlement shall be made hereafter on the northwest coast of America, or on any of the islands adjacent thereto, north of the fifty-fifth degree of north latitude, by citizens of the United States, or under their authority; nor by Russian subjects, or under the authority of Russia, south of the same parallel of latitude."

At the second conference, which was on the 20th of February, Count Nesselrode, who was accompanied by Mr. Poletica, gave Mr. Middleton the following counter-draft:

[TRANSLATION.]

"ARTICLE I. To cement the bonds of amity, and to secure, for the future, a good understanding and a perfect concord between the high contracting powers, it is agreed that, in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts upon points which may not already be occupied, for the purpose of trading with the natives; saving, always, the restrictions and conditions determined by the following articles.

"ARTICLE II. With the view of preventing the rights of navigation and of fishing, exercised upon the great ocean by the citizens and subjects of the high contracting powers, from

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"ARTICLE III. It is, moreover, agreed that, in the respective possessions of the two high powers on the northwest coast of America, or in any of the adjacent islands, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishments to the north of 54° 40' of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, to the south of the same parallel.

"[With admission of American vessels to New Archangel.]"

As to this counter-draft, Mr. Middleton's minutes of the second conference contain the following:

"I observed, that the insertion in the second article was utterly inadmissible, as repugnant to the stipulations of the former article, and that, instead of the admission of American vessels solely to New Archangel, in the third article, I should propose the commercial principle adopted by the United States and England upon the same coast (indiscriminate admission, etc., for a limited period). That I must now frankly tell them that my instructions required that I should obtain two points as necessary conditions to the third object contemplated by the project of convention. First, the revocation, either spontaneous or by convention, of the maritime provisions of the ukase of September 4 (16), 1821. Secondly, the adoption of the commercial principle (or something similar) agreed upon between the United States and Great Britain, in their convention of 1818, in relation to these coasts. Thirdly, that, these preliminaries being settled, a *territorial delimitation for settlements* at fifty-five degrees might be agreed upon.

"Upon this Mr. Poletica assured me, with a strong asseveration, that he would never be brought to sign an instrument containing the principle of free admission for *our ships to their coasts*, whatever the Count might think proper to do. He continued to argue warmly against anything of the kind. I replied somewhat at length, and concluded by saying that unless he could be brought to change his mind upon this point, it was more than probable *we* should be able to do nothing. Russia must then be content to *keep her ukase*, and other nations would only have to see what means they may possess of carrying on the northwest trade *in spite of it*. The Count took no share in this *a-parte* discussion, and when it concluded I told him that I should take his contre-projet home with me to consider it and make such further propositions as reflection should suggest. We agreed to meet again in three days."

At the fourth conference, which was on the 8th of March, Mr. Middleton submitted to Count Nesselrode the following paper:

[TRANSLATION.]

"The dominion cannot be acquired but by a *real* occupation and possession, and an *intention* (animus) to establish it is by no means sufficient.

"Now, it is clear, *according to the facts established*, that neither Russia nor any other European power has the right of dominion upon the continent of America between the 50th and 60th degrees of north latitude.

"Still less has she the dominion of the adjacent maritime territory, or of the sea which washes these coasts, a dominion which is only accessory to the territorial dominion.

"Therefore she has not the right of *exclusion or of admission* on these coasts, nor in these seas, which are free seas.

"The right of navigating all the free seas belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

"The United States have exercised navigation in the seas, and commerce upon the coasts, above mentioned, from the time of their independence; and they have a *perfect* right to this navigation and to this commerce, and they can only be deprived of it by their own act or by a convention."

What then transpired at the conference Mr. Middleton's notes relate as follows:

"Having read this with attention, he [Count Nesselrode] exclaimed, 'Well, *here is a convention*. We must see if 't is not possible to come to an arrangement.' He then stated that there could, however, now remain only one means of accommodating the existing difference. This he would state hypothetically (supposing the possibility of the Emperor's permitting the stipulation of a free trade for ten years to be agreed to.) It was a proposition which, *perhaps*, would be made to me at a future meeting. It would be intended to prohibit the trade in firearms and ammunition. He went into a recapitulation of the complaints of Mr. Daschkoff and Count Pahlen, on account of the injuries arising from the firearms furnished to the natives by our citizens. I took occasion here to declare that all these proceedings of the Russian Government were founded in *erroneous* impressions, and arose from their having improperly conceived that they had a *right* to regulate our commerce upon a coast which, being unoccupied, was free and open to all nations. It was clear that they had no right to demand any regulation of the kind. He replied, they did not now, of course, expect any arrangement which should not be marked by *reciprocity*. I remarked that any restriction of the kind would be in many respects liable to objections. That the first which presented itself to my mind was, that such a regulation could not be carried into effect without admitting a right of search, which was wholly inadmissible in time of peace. He replied, they had no intention of proposing anything of the kind, for that they would be satisfied with the right of *making representations* to our Government, in case of the infraction of the regulation which should be adopted, by our traders."

What occurred at subsequent conferences is stated in Mr. Middleton's minutes as follows:—

"Considerable delay occurred after the conference of the 8th March, occasioned partly, as I understood, by the indisposition of the Emperor,

and partly, too, as I supposed, to give time for consultation with the Directors of the Russian American Company. At length, on the morning of the 22nd March, Mr. Poletica called upon me and stated that he had now a projet to offer on the part of his Government (see paper lettered *l*.) and that he would leave it with me for consideration. Among other things, he observed that the prohibition of a trade in arms and ammunition would be a *sine qua non*, and that the Emperor wished, in views of benevolence, to add thereto all kinds of spirituous liquors. This was confirmed to me by Count Nesselrode's note of 20th March, (see paper lettered *m*.) Mr. Poletica stated that Count Nesselrode proposed to receive me on Monday, the 24th instant at his house, at one o'clock p. m.

"Accordingly I attended on Monday, the 24th March, and offered the projet lettered (*n*). The argument this day turned generally upon the restrictions proposed to be imposed upon the trade. The sale of arms to the savages, whose blind passions are unrestrained by any moral tie, must be equally pernicious to themselves and all who come within their reach. The greatest objection to this prohibition appeared to me to be that the restriction may be converted into a pretext for vexations upon our commerce, if seizure or confiscation were permitted; and, on the other hand, it seemed likely that all other modes of carrying the prohibition into effect would prove nugatory. I had been told, however, that they would be satisfied with its interdiction under such penalties as we might think proper to impose; that in case of infraction they would content themselves with *representations* to the Government; but that, finally, the measure was a *sine qua non*. In order to meet this proposition, I had drawn up the article as it stands in the projet, as, upon the whole, I concluded that our Government will probably consider the proposal as less objectionable than at a former period, from considerations, at least, of *reciprocity*, now that we have an acknowledged territory upon the western coast, and when, too, it might perhaps be unavailing to attempt to resist the claims of Russia, likely so soon to be fully acknowledged by Great Britain.

"On the 28th Mr. Poletica brought me the projet lettered (*o*). It now appeared to me that the latter part of the fourth article, 'that the reciprocal right shall cease,' etc., had still too much the appearance of a substantive stipulation, although I had changed it from an entire article in their projet of the 22nd of March, so as to stand as an accessory to the preceding stipulation of an open trade. In the fifth article, their expression 'of arbitrary measures' did not appear to me to be sufficiently precise, as it left them at liberty to adopt *regulations* and to carry them into effect, because it could not be said that such regulations were arbitrary. For these reasons I proposed at our meeting on the 31st that the fourth and fifth articles should stand as set forth in the projet lettered (*p*.)

"The fourth article became the subject of warm debate during the three meetings upon the 31st of March and the 1st and 2nd of April; at the last of which they proposed that I should sign a protocol of the tenor of that

lettered (*q.*) This was refused by me as asserting what was evidently untrue, to wit: that the two forms specified therein *meant the same thing*; but I consented to sign another protocol, of which one of the originals is forwarded herewith, lettered (*r.*) The protocol of signature is lettered (*s.*) and the convention (*t.*)

"Such is the sum and substance of what passed in our conferences, as extracted from the short notes I made directly after each meeting. If it should appear to be meagre and desultory, this must be accounted for from the circumstance that we had set out disclaiming all *regular discussion* of right or of fact; and if anything approaching to it was resorted to, it was only when I deemed some statement absolutely necessary to support our pretensions; but in general everything of the nature of *discussion* appeared to be carefully avoided by the adversary."

[ENCLOSURE L IN MR. MIDDLETON'S NO. 35.]

Projet of Russia of March 22.

[TRANSLATION.]

His Majesty the Emperor of all the Russias and the Government of the United States of America, wishing to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord, by means of the present convention, have named as their plenipotentiaries to this effect, to wit: His Majesty the Emperor of all the Russias, his beloved and faithful Charles Robert, Count of Nesselrode, &c., &c., and Pierre de Poletica, &c., and the Government of the United States of America, Henry Middleton, Esq., &c., who, after having exchanged their full powers, found in good and due form, have agreed upon and signed the following stipulations:

ARTICLE I. It is agreed that in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens and subjects of the high contracting parties shall be neither disturbed nor restrained either in navigation or in fishing, or in the power of resorting to the coasts upon points which may not already be occupied for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

ARTICLE II. With a view of preventing the rights of navigation and of fishing, exercised upon the great ocean by the citizens and subjects of the high contracting parties, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point of the coasts already occupied by Russian establishments, without the permission of the governor or commander of said establishments; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the northwest coast.

ARTICLE III. It is moreover agreed that, in the respective possessions of the two high powers upon the northwest coast of America or in any of the adjacent islands, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment to the north of 54° 40' of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, to the south of the same parallel.

ARTICLE IV. It is, nevertheless, understood that the vessels of the two powers, or which belong to their respective citizens or subjects, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors and creeks in the possession of Russia and of the United States of America on the northwest coast, for the purpose of fishing and trading with the natives of the country.

ARTICLE V. This reciprocal right of fishing and of trade is only granted for a term of ten years from the date of the signing of the present convention, at the end of which term it shall cease on both sides.

ARTICLE VI. From this time fire-arms, other arms, powder and munitions of war of every kind are always excepted from this same commerce, which the two powers engage not to sell nor allow to be sold to the natives by their respective citizens and subjects, nor by any person who may be under their authority.

ARTICLE VII. The present convention shall be ratified, and the ratifications thereof shall be exchanged at St. Petersburg in the space of —.

In faith whereof the respective plenipotentiaries have signed it and thereto affixed the seal of their arms.

Done at — the — of the year of grace, 1824.

[ENCLOSURE M IN MR. MIDDLETON'S NO. 35.]

Count Nesselrode to Mr. Middleton.

[TRANSLATION.]

The undersigned, Actual Privy Counsellor, Secretary of State directing the administration of Foreign Affairs, has had the honor to mention to Mr. Middleton, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, the desire which the Emperor had of seeing arms, munitions, and spirituous liquors excepted from the articles of which the reciprocal trade might be declared free during ten years with the natives of the northwest coast of America, by the convention which Russia and the United States are upon the point of concluding.

The undersigned hastens to assure Mr. Middleton, by writing, that the immediate prohibition of the trade in arms and munitions with the natives is a condition to which His Imperial Majesty attaches the highest importance, a condition the absence of which would not permit him to give his assent to the rest of the treaty.

As to the prohibition of the trade in spirituous liquors the Emperor eagerly desires that it should be pronounced, and he does not doubt that Mr. Middleton and the Government of the United States [will] receive in the most favorable manner this wish, dictated by motives of humanity and morality.

The undersigned, &c.,

NESSELRODE.

ST. PETERSBURG, *March 20, 1824.*

[ENCLOSURE N IN MR. MIDDLETON'S NO. 35.]

Projet of the United States of March 24.

[TRANSLATION.]

His Majesty the Emperor of all the Russias and the President of the United States of America, wishing to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord, by means of the present convention, have named as their plenipotentiaries to this effect, to wit: His Majesty the Emperor of all the Russias, his beloved and faithful Charles Robert, Count of Nesselrode, &c., &c., and Pierre de Poletica, &c., &c., and the President of the United States of America, Henry Middleton, a citizen of said States, and their Envoy Extraordinary and Minister Plenipotentiary near His

Imperial Majesty; who, after having exchanged their full powers, found in good and due form, have agreed upon and signed the following stipulations:

ARTICLE I. It is agreed that in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens and subjects of the high contracting parties shall be neither disturbed nor restrained either in navigation or in fishing, or in the power of resorting to the coasts upon points which may not already be occupied for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

ARTICLE II. With the view of preventing the rights of navigation and of fishing, exercised upon the great ocean by the citizens and subjects of the high contracting powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the northwest coast.

ARTICLE III. It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the northwest coast of America, nor in any of the islands adjacent, to the north of $54^{\circ} 40'$ of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, to the south of the same parallel.

ARTICLE IV. It is, nevertheless, understood that the vessels of the two powers, or which belong to their citizens or subjects, respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors and creeks upon the said coast for the purpose of fishing and of trading with the natives of the country. But the reciprocal right granted by this article shall cease, on both sides, after the term of ten years, to be counted from the signing of the present convention.

ARTICLE V. Fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article; and the two powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It being well understood that, in any case, this restriction shall not be considered to authorize, under the pretext of a contravention of this article, the visit or the detention of vessels, or the seizure of the merchandise, or, in fine, any vexations whatever exercised towards the owners or the crews employed in this commerce; the high contracting powers, reciprocally, reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments due, in case of the contravention of this article by their respective citizens and subjects.

ARTICLE VI. When this convention shall have been duly ratified by His Majesty the Emperor of all the Russias on one part and on the other by the President of the United States, with the advice and consent of the Senate, the ratifications thereof shall be exchanged at Washington in the space of ten months from the date below, or sooner, if possible.

In faith whereof the respective plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at — the — of the year of Grace 1824.

[ENCLOSURE O IN MR. MIDDLETON'S NO. 35.]

Contre projet of Russia of March 28.

This projet is virtually identical with that of the United States of March 24 (Enclosure N), the only change being a verbal one in the second sentence of Article V.

[ENCLOSURE P IN MR. MIDDLETON'S NO. 35.]

Project of the United States of March 31.

[TRANSLATION.]

ARTICLE IV. It is, nevertheless, understood that, during a term of ten years, to be counted from the signing of the present convention, the ships of the two powers, or which belong to their citizens or subjects, respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

ARTICLE V. All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from the commerce permitted by the preceding article; and the two powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never serve for a pretext, nor be alleged, in any case, to authorize either the search or detention of vessels, or the seizure of the merchandise, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the high contracting powers, reciprocally, reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments due, in case of a contravention of this article by their respective citizens or subjects.

[ENCLOSURE Q IN MR. MIDDLETON'S NO. 35.]

Project of Protocol submitted by the Russian negotiators on April 2, which Mr. Middleton refused to sign.

[TRANSLATION.]

The undersigned, after having discussed in several conferences a project of convention proposed for removing all the differences which have arisen between Russia and the United States of America, in consequence of a regulation published by the former of these powers, on the 4th (16th) September, 1821, definitively drew up the different articles of which this convention is composed, added to them their sign manual, and mutually engaged to sign them as they are found annexed to the present protocol.

In drawing up the 4th of these articles, the plenipotentiaries of Russia recollected that they had proposed to the plenipotentiary of the United States to arrange the said article in the following terms:

ARTICLE IV. "It is, nevertheless, understood that the ships of the two powers, or which belong to their citizens or subjects respectively, may mutually frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks upon the said coast, for the purpose of there fishing and trading with the natives of the country. But the reciprocal right granted by this article shall cease, on both sides, after a term of ten years, to be counted from the signing of the present convention."

The plenipotentiaries of Russia added, that, after agreeing to this arrangement, the plenipotentiary of the United States had afterwards invited them to change the ending of this very article, and to agree to it as it is transcribed opposite * observing that this second arrangement, more conformable to the letter of the instructions which he had received, in no way altered the sense of that which had been proposed by the plenipotentiaries of Russia.

The plenipotentiary of the United States having repeated this observation, the article in question was signed with the modification which he had demanded to be there introduced.

* ARTICLE IV.—"It is, nevertheless, understood that, during a term of ten years, to be counted from the signing of the present convention, the ships of the two powers, or which belong to their citizens or subjects, respectively, may mutually frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks upon the said coasts, for the purpose of there fishing and trading with the natives of the country."

After which all the other articles were also signed, and it was resolved to proceed to the signature of the convention itself the — following.

Done at St. Petersburg, the —, 1824,

[ENCLOSURE R IN MR. MIDDLETON'S NO. 25.]

Protocol of Signature of the Articles.

[TRANSLATION.]

The undersigned, after having discussed in several conferences a projet of a convention proposed for settling all the differences which arose between the United States of America and Russia, in consequence of a regulation published by the latter of these powers on the 4th (16th) September, 1821, definitively drew up the different articles of which this convention is composed, added to them their sign manual, and mutually engaged to sign them as they are found annexed to the present protocol.

In drawing up the 4th of these articles, the plenipotentiaries of Russia recollected that they proposed to the plenipotentiary of the United States to arrange the said article in the following terms:

ARTICLE IV. "It is, nevertheless, understood that the ships of the two powers, or which belong to their citizens or subjects, respectively, may mutually frequent, without any hindrance, whatever, the interior seas, gulfs, harbors, and creeks upon the said coast, for the purpose of there fishing and trading with the natives of the country. But the reciprocal right granted by this article shall cease, on both sides, after a term of ten years, to be counted from the signing of the present convention."

The plenipotentiaries of Russia added that, after agreeing to this arrangement, the plenipotentiary of the United States had afterwards invited them to change the ending of this very article, and agree to it as it is found signed in the convention, observing that this second arrangement, more conformable to the letter of the instructions which he received, is the only one which he thinks himself authorized to sign; but, moreover, that this arrangement does not essentially alter the sense of that which had been proposed by the plenipotentiaries of Russia, because, at the end of the term mentioned, the stipulation ceasing equally by the two arrangements, the reciprocal power of trading granted by that stipulation cannot be prolonged beyond the said term but by mutual agreement.

Under these observations the article in question has been signed, with the modification which the plenipotentiary of the United States had demanded to be there introduced.

After which all the other articles were also signed respectively, and it was resolved to proceed to the signature of the convention itself on the fifth following.

Done at St. Petersburg, April 2, (14), 1824.

HENRY MIDDLETON.
NESSELRODE.
POLETICA.

[ENCLOSURE S IN MR. MIDDLETON'S NO. 35.]

Protocol of Signature of the Convention.

[TRANSLATION.]

The undersigned, having engaged by the protocol of their last conference to sign on the 5th April of the present year the convention of which they signed all the articles, assembled this day at two o'clock in the afternoon, at the hotel inhabited by Count Nesselrode, and after having duly collated with the said articles the two copies of the convention which they had caused to be prepared, they have attached to both their respective signatures and the seals of their arms.

Done at St. Petersburg, April 5, [17,] 1824.

HENRY MIDDLETON.
NESSELRODE.
P. POLETICA.

The Convention.

[TRANSLATION.]

In the name of the Most Holy and Indivisible Trinity.

The President of the United States of America and His Majesty the Emperor of all the Russias, wishing to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord, by means of the present convention, have named as their Plenipotentiaries to this effect, to wit:

The President of the United States of America, Henry Middleton, a citizen of said States, and their Envoy Extraordinary and Minister Plenipotentiary near His Imperial Majesty; and His Majesty the Emperor of all the Russias, his beloved and faithful Charles Robert Count of Nesselrode, actual Privy Counsellor, Member of the Council of State, Secretary of State directing the administration of Foreign Affairs, actual Chamberlain, Knight of the Order of St. Alexander Nevsky, Grand Cross of the Order of St. Wladimir of the first class, Knight of that of the White Eagle of Poland, Grand Cross of the Order of St. Stephen of Hungary, Knight of the Orders of the Holy Ghost and of St. Michael, and Grand Cross of the Legion of Honor of France, Knight Grand Cross of the Orders of the Black and of the Red Eagle of Prussia, of the Annunciation of Sardinia, of Charles III of Spain, of St. Ferdinand and of Merit of Naples, of the Elephant of Denmark, of the Polar Star of Sweden, of the Crown of Würtemberg, of the Guelphs of Hanover, of the Belgic Lion, of Fidelity of Baden, and of St. Constantine of Parma; and Pierre de Poletica, actual Counsellor of State, Knight of the order of St. Anne of the first class, and Grand Cross of the Order of St. Wladimir of the second;

Who, after having exchanged their full powers, found in good and due form have agreed upon and signed the following stipulations:

ARTICLE I. It is agreed that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

ARTICLE II. With a view of preventing the rights of navigation and of fishing exercised upon the Great Ocean by the citizens and subjects of the high contracting Powers from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the Northwest coast.

ARTICLE III. It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the Northwest coast of America, nor in any of the islands adjacent, to the north of fifty-four degrees and forty minutes of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

ARTICLE IV. It is, nevertheless, understood that during a term of ten years, counting from the signature of the present convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

ARTICLE V. All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article; and the two Powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the

natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandise, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the high contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this article by their respective citizens or subjects.

ARTICLE VI. When this convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate, on the one part, and, on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at St. Petersburg the 17-5 April, of the year of Grace one thousand eight hundred and twenty-four.

	HENRY MIDDLETON.	[L. S.]
Le Comte	CHARLES DE NESSELRODE.	[L. S.]
	PIERRE DE POLETICA.	[L. S.]

No. 36.

Convention between Great Britain and Russia

Relative to "the commerce, navigation, and fisheries of their subjects on the Pacific Ocean, as well as the limits of their respective possessions on the northwest coast of America."

SIGNED AT ST. PETERSBURG, FEBRUARY 28, 1825.

[EXTRACT.]

ARTICLE I. It is agreed that the respective subjects of the high contracting parties shall not be troubled or molested, in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following articles.

ARTICLE II. In order to prevent the right of navigation and fishing, exercised upon the ocean by the subjects of the high contracting parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment, without the permission of the governor or commandant; and, on the other hand, that Russian subjects shall not land, without permission, at any British establishment on the northwest coast.

ARTICLE VI. It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the Ocean, or from the interior of the continent, shall forever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article 3 of the present convention.

ARTICLE VII. It is also understood, that, for the space of ten years from the signature of the present convention, the vessels of the two powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens and creeks on the coast mentioned in Article 3 for the purpose of fishing and of trading with the natives.

ARTICLE VIII. The port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of ten years from the date of the exchange of the ratifications of the present convention. In the event of an extension of this term of ten years being granted to any other power, the like extension shall be granted also to Great Britain.

ARTICLE IX. The above mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire-arms, or other arms, gunpowder, or other warlike stores; the high contracting parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

NOTE.—By Article XII of the treaty between Great Britain and Russia signed January 11, 1843, it is stated that "It is understood, that in regard to commerce and navigation in the Russian possessions on the northwest coast of America, the convention concluded at St. Petersburg, on the 18th February, 1825, continues in force."

No. 37.

Baron Krudener to Mr. Dickens.

[TRANSLATION.]

WASHINGTON, May 10th, 1835.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty, the Emperor of all the Russias, has the honor to address the following communication to Mr. Dickens, who has charge of the Department of Foreign Relations, during the absence of the Secretary of State.

The convention concluded between Russia and the United States on the 17th of April, 1824, regulated various points respecting the commerce and navigation of the vessels of each nation, along the northwest coast of America. The fourth article of this convention grants to American vessels for ten years after the date of the signature thereof, the right of frequenting without any hindrance whatever, the interior seas, gulfs, harbors, and creeks comprised within the limits of the Russian possessions on the aforesaid coast, and especially northward of 54° 40' of north latitude.

This period of ten years expired on the 17th of April, 1834; notwithstanding which, two American captains, Snow and Allen, who were then in the port of Novo Archangelsk, declared their intention to visit the anchoring places on the coast belonging to Russia, as before, on the plea that they had received no notice of the cessation of this privilege from their Government. This declaration induced Captain Baron de Wrangel, Governor of

the Russian American colonies, to state formally to Captains Snow and Allen, by a circular addressed to them, under date of April 27th, that by the terms of the convention of April, 1824, American vessels had no longer the right of landing at their discretion at all the landing places of the said possessions in America.

In consequence of what is here exposed, the ministry of His Majesty, the Emperor of all the Russias, has ordered the undersigned to call the attention of the American Government to the fact that the fourth article of the treaty of $\frac{5}{17}$ of April, 1824, by which indefinite and indiscriminate liberty (*une liberté indéfinie et indistincte*) of frequenting the respective possessions of each party, on the northwest coast, was granted to the vessels of each, has expired. The new state of things brought on by the terms of the treaty, since the expiration of the said ten years, not having been sufficiently appreciated by the navigators of the United States, who have latterly frequented the Russian possessions on the northwest coast of North America, it appears to be necessary that the American public should be informed of the actual state of the relations on this subject, and the undersigned has been ordered to invite the Government of the United States to take the most suitable measures with regard to it.

The undersigned, &c.,

B. KRUDENER.

No. 38.

Mr. Dickins to Baron Krudener.

DEPARTMENT OF STATE,

WASHINGTON, June 3, 1835.

The undersigned, Acting Secretary of State, has the honor to acknowledge the receipt of the note addressed to him on the 19th (31st) ultimo, by Baron Krudener, Envoy Extraordinary and Minister Plenipotentiary of His Majesty, the Emperor of all the Russias, reminding this Government of the expiration of the fourth article of the treaty of $\frac{5}{17}$ April, 1824, between the United States and Russia, which secured to American and Russian vessels the privilege of frequenting the respective possessions of the two powers on the northwest coast, and suggesting the propriety of the adoption of proper measures to notify this fact to the people of the United States.

The undersigned has the honor to inform Baron Krudener that he will take an early opportunity to submit his communication to the President, and he avails, &c.,

ASBURY DICKINS.

No. 39.

Mr. Forsyth to Baron Krudener.

DEPARTMENT OF STATE,

WASHINGTON, June 24. 1833.

SIR :

I have the honor to inform you that your note of the 19th-31st ultimo, calling the attention of this Government to the fact that the fourth article of the convention of April, 1824, between the United States and Russia, had expired by its own limitation during the year 1834, and suggesting the propriety of making this event known to the American public, has been laid before the President for his consideration. As, however, the motives which led to, and rendered expedient the adoption of that article of the treaty of 1824, exist now in equal force, and as the arrangement has been found mutually beneficial to the interests of the citizens and subjects, respectively, of the contracting parties, without inconvenience to either, I am instructed to apprise you that the President would prefer not to take any active measures to interrupt the commercial intercourse between the United States and the Russian settlements on the northwest coast of America, unless, in your opinion, there is reason to believe that a proposition on the part of this Government for the renewal of the article referred to, would not be met in a favorable spirit by the Government of His Imperial Majesty at St. Petersburg.

An early answer to this communication if you are not aware of any difficulty, on the part of your Government in the way of such a negotiation, will enable me, without unnecessary delay, to transmit the requisite instructions on the subject to the diplomatic representative of the United States in Russia.

I pray you, sir, to accept, &c.,

JOHN FORSYTH.

No. 40.

Baron Krudener to Mr. Forsyth.

[TRANSLATION.]

PHILADELPHIA, June 29, (July 11,) 1835.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of all the Russias, has received the note of June 24th which was addressed to him by Mr. Forsyth, Secretary of State of the United States. He would have made it a duty to answer it immediately, had the state of his health permitted.

The undersigned regrets that it is entirely out of his power to give any distinct opinion as to the result which might attend any steps on the part of the Cabinet of the United States to engage the Government of His Imperial Majesty to stipulate a renewal of the fourth Article of the treaty of the $\frac{5}{17}$ th of April, 1824, which ceased to be in force last year. It being thus impossible for the undersigned to foresee the intentions of the Emperor, he can only persevere in compliance with the orders transmitted to him by the Ministry, and in repeating the demand which formed the object of his note of the $\frac{19}{11}$ of May. The undersigned is the more obliged to comply with this duty, as the instructions with which he is furnished on this subject are positive, and express no doubt as to the readiness of the American Government to proceed to the publication requested.

The undersigned, &c.,

B. KRUDENER.

No. 41.

Mr. Forsyth to Baron Krudener.

DEPARTMENT OF STATE,

WASHINGTON, *July 21, 1835.*

SIR:

I have received your note of the 29th June (11th July), declining to express an opinion as to the probable result of an application on the part of this Government to that of His Imperial-Majesty for a renewal of the fourth article of the convention of 1824, between the United States and Russia, and reiterating the request contained in your communication of the 19th (31st) May last, that the fact of the expiration of the term limited in the article referred to, should be, in some form, brought into notice, for the information of the American public. I have, in answer, the honor to state that a formal notice from the Government is not deemed necessary. All the citizens of the United States are bound to know existing laws, and their rights and obligations under existing treaties. Still, however, as His Imperial Majesty's Government has especially invited the attention of this Government to the subject, an informal notice will be given through the public journals of Baron de Wrangel's warning to the captains of American vessels on the northwest coast of this continent.

I will be very happy to receive from you, as early as practicable, precise information of the measures His Imperial Majesty's Government has adopted, or proposes to adopt, in relation to the subject, as corresponding regulations may be deemed necessary by the United States in regard to Russian subjects in the event of the non-renewal of the treaty stipulation.

I pray you to accept, &c.,

JOHN FORSYTH.

No. 42.

Baron Krudener to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, *July 14, (26,) 1835.*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of all the Russias, has had the honor to receive the note dated July 21st, in which Mr. Forsyth, Secretary of State of the United States, in reply to his communication of June 29, (July 11,) informs him that the Government of the United States intended to insert in the public newspapers, an unofficial notice of the warning given by Baron Wrangel to the captains of American vessels on the northwest coast of this continent respecting the expiration of the fourth Article of the treaty of April 3^d, 1824; expressing also a desire to receive from the undersigned, as soon as possible, precise information with regard to the measures which the Imperial Government has adopted, or may adopt, on this subject, as corresponding regulations with regard to Russian subjects may be considered necessary in case the stipulation of the treaty be not renewed. The undersigned has without delay submitted to his Government the said note of the Secretary of State, and will communicate to him the results as soon as they are received.

The undersigned, &c.,

B. DE KRUDENER.

No. 43.

Mr. Forsyth to Mr. Wilkins.

[No. 4.]

DEPARTMENT OF STATE,

WASHINGTON, *July 30, 1835.*

SIR:

I transmit to you, enclosed, the copy of a recent correspondence with Baron Krudener, the diplomatic representative of His Majesty the Emperor of Russia at Washington, regarding the 4th article of the convention of April, 1824, between the United States and that Empire. It will be perceived from these papers, that the Baron has taken occasion to remind this Government of the expiration of the term limited in that article, and to request that a notification of this fact may be given for the information of the American public. An informal notice has been accordingly published in the *Globe* of the 22d instant, of Baron de Wrangel's warning to the captains of certain American vessels trading with the Russian settlements on the northwest coast of America. It will also be seen that, in answer to an inquiry from this Department, Baron Krudener has declined to express an opinion as to the

probable result of a proposition to His Imperial Majesty's Government for a renewal of the article referred to.

It therefore becomes necessary, and you are now authorized by the President's direction, to enter immediately upon a negotiation with the Government of His Imperial Majesty, if it should be found willing to entertain the proposition, for the renewal of the stipulations of the 4th article of the convention of the 5th (17th) April, 1824, for an indefinite period, or, if this cannot be had, for a term of years.

There is reason to believe that the course pursued by the Captain Baron de Wrangel, Governor of the Russian American colonies, incidentally mentioned in the Baron de Krudener's letter of the 31st May last, has been instigated by the Russian American Fur Company; and it is not improbable that representations of a character similar to those made to the Governor, and from the same source, have been transmitted to St. Petersburg. If prejudices exist of the nature apprehended, and tending to defeat the object now in view, they will be easily discoverable in your intercourse with the Russian Minister of Foreign Affairs, and you will take an early opportunity to discredit them, by showing that representations growing out of private interests are always to be received with great caution, and should not be suffered to influence the decision of a question which may be productive of injury to the citizens and subjects, respectively, of the contracting parties.

The motives that prompted the adoption of the fourth article of the treaty of 1824, by the parties to that convention, exist now in equal, if not super-added force; since it will not be denied, that it has been mutually beneficial to the citizens of both, without being inconvenient to either. Serious objections on the part of Russia, therefore, to the renewal of the stipulations contained in it, can hardly be anticipated. Should this reasonable expectation, however, be disappointed, it is the wish of the President that you should, without unnecessary delay, obtain from His Imperial Majesty's Government precise information in regard to the measures adopted, or proposed to be adopted, on its part, in relation to the admission of American vessels into the harbors, bays, and rivers of the Russian settlements, on the northwest coast of this continent, in order that corresponding regulations, if deemed necessary, may be made by this Government.

I am, &c.,

JOHN FORSYTH.

[ENCLOSURE IN MR. FORSYTH'S NO. 4.]

Extract from the "Globe" newspaper of July 22, 1835.

It will be recollected that a convention was concluded between the United States and Russia in April, 1824, regulating various matters connected with the commerce and navigation of the two nations, on the northwest coast of America. By the 4th article it was stipulated that the ships of both nations might, during a term of ten years, frequent, without hindrance, the interior seas, gulfs, harbors, and creeks of each nation on that coast, for the purpose of fishing and trading with the natives of the country. The ten years expired in April, 1834;

and we understand that formal notice has been given by the Governor of the Russian colonies, to the masters of the American ships then trading there, that they could no longer claim, under the convention, the right of landing, at all the landing places, without distinction, belonging to Russia on that coast. Those interested in the trade will not fail to observe that, under the 2d article of the convention, it is necessary for all American vessels, resorting to any point on that coast, where there is a Russian establishment, to obtain the permission of the governor or commander.

No. 44.

Mr. Wilkins to Mr. Forsyth.

[No. 14.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, *November 23, 1835.*

SIR :

In the last despatch which I had the honor to address to you, on the 26th of September last, I informed you it was likely you would not again hear from me until after the return of the Emperor and Count Nesselrode to this capital.

His Majesty returned on the 1st instant, having been preceded a few days by his Minister of Foreign Affairs.

Immediately upon receiving from Count Nesselrode the usual written notice of his having resumed the duties of his official station, I addressed him a note and requested him to name a day when I might have the honor of a personal conference. He mentioned the 4th instant. I waited upon him accordingly at the foreign office, and disclosed to him the wishes of the American Government in reference to the renewal of the 4th Article of the treaty of April, 1824; and held with him such conversation, and placed the matter in that light, which seemed to me the most proper and in accordance with my instructions. Upon the close of our conversation, I handed to him, in writing, a memorandum of the proposal you authorized me to submit. The view in which I placed the matter, and the substance of the conversation, will appear (and, therefore, need not be more particularly detailed) by reference to the copies of the notes which I addressed to him immediately after the conference, simply noting two observations which fell from him. * *

I have, &c.,

WM. WILKINS.

[ENCLOSURE 1 IN MR. WILKINS' NO. 14.]

Mr. Wilkins to Count Nesselrode.

ST. PETERSBURG, *November 1 (13), 1835.*

* * * * *

Notwithstanding his very recent conversation with Count Nesselrode in reference to the proposition of the American Government to renew the expired 4th article of the treaty of April, 1824, the undersigned will embrace the present occasion to repeat what may then have been, in a very brief manner,

verbally represented, and to add a few remarks immediately bearing upon that question.

The diplomatic representative of His Imperial Majesty at Washington City having taken occasion to remind the United States of the expiration of the ten years stipulated in the 4th Article of the treaty of 1824, and to desire thereon the action of their chief magistrate, is indicative of the necessity that the two governments should, as early as convenient, come to a decision upon the policy hereafter to control their citizens and subjects, respectively, upon the northwest coast. Hence it is that, under express instructions, the undersigned had the honor, immediately upon the return of his excellency Count Nesselrode to the capital, to call his attention to the question, and to submit to him his proposal of October 23 (November 4), of which the undersigned delivered at the time a memorandum in writing.

The motives which influence the Government of the United States in submitting that proposition to the Imperial Ministry, will be found to arise out of a consideration of the following circumstances:

1st. The desire to avoid any difficulty, and apprehension of collision, between the inhabitants, traders, and fishermen upon that wild coast, so remotely situated, but with very few and widely separated posts of civilization, and the entire country almost so exclusively occupied by savage tribes as to render restraint and proper responsibility to the law, well nigh out of the question with either Government.

2d. The proposed arrangement would render definite and precise the rights and duties of the subjects and citizens of the contracting parties respectively, and would obviate all necessity to resort to a construction of the remaining articles of the treaty of April, 1824, and would likewise avoid any chance of conflicting interpretations of that instrument.

3d. Since the undersigned had the honor, in their personal conference the other day, to be informed by his excellency Count Nesselrode of the arrangement relative to the trade and intercourse upon the northwest coast of America, subsisting at present between the governments of Russia and Great Britain, he has turned to the 1st and 11th articles of the commercial treaty of the 6th (18th) of December, 1832, between Russia and the United States, and begs leave to call the attention of the Imperial Minister to the same articles, who will upon their perusal, see for himself how far their provisions bear upon the present subject, and whether they may not give rise to an inquiry, which may be rendered unnecessary by an acquiescence in the proposed arrangement.

4th. Touching the especial matter in question, the proposed arrangement would, it is believed, place the three nations, Russia, England, and the United States, upon the same fair footing, and upon the same equality, in the enjoyment of a community of privileges.

In the personal interview of the 4th instant (N. S.), his excellency Count Nesselrode mentioned two circumstances to which the undersigned will now refer for a moment. One was, the objection entertained by the Imperial Government to all traffic in fire-arms and spirituous liquors, by American citizens, with the native Indians. To this the undersigned now replies, as he did then very succinctly, that it is believed the treaty of 1824, containing a stipulation against that traffic, immediately put an end to it; that there have been no infractions since its adoption—certainly none complained of in representations to the Government at Washington; that, as a farther assurance against infringements upon that humane stipulation, and as an evidence of the sincere desire of his government to enforce it, the undersigned, immediately after their conference, enclosed to his excellency a copy of a law passed by Congress, declaring certain prosecutions and penalties

against those who should offend against that provision of the treaty. And the undersigned will, on this point, content himself by adding that the above traffic is now discountenanced and prohibited by the present well known and benevolent course of policy pursued by the American Government towards the wild and uncultivated aborigines of the country.

The other circumstance mentioned by his excellency was that, as the Russian American Fur Company were particularly interested in the decision of the question, he conceived it to be his duty to consult its directors before he could give a final answer.

It is not often that those who enjoy a monopoly under a liberal grant from an indulgent sovereign will be willing even to modify, or permit others to participate in, any portion of their privileges. But, in the present instance, it must be recollected that such a concession is not embraced in the proposition submitted without a fair equivalent; for the privilege to fish and traffic north and south of the latitude of $54^{\circ} 40'$ would rest upon the just principles of reciprocity.

Whether any prejudices or individual interests exist, having a tendency to disincline His Imperial Majesty to assent to a renewal of the expired article of the treaty of 1824, or how far such prejudices or interests, if they do manifest themselves on the part of individual gentlemen of the first respectability, ought to influence the action of Governments upon a question of general import and affecting national and amicable intercourse, is not for the undersigned alone to determine. It is enough for him to know that the views in 1824, which produced the provision contained in the 4th article, have been tested by experience, and the results, being mutually beneficial and convenient, prove their propriety.

To justify the presumption that the annual visits of American ships, in the prosecution of their adventures upon the northwest coast, are sometimes very convenient and must be beneficial to the Russian settlements and ports in that distant and not productive climate, the undersigned takes leave to refer to a contract made within a few days by the Russian American Fur Company with an American citizen for supplies to their agents and ports for the ensuing year.

Should the undersigned, however, be disappointed in the reasonable expectation he has formed, and the Imperial Government be unwilling to entertain the proposal to renew, either indefinitely or for another term of years, the provisions of the article of the treaty referred to, he requests that his excellency Count Nesselrode will do him the favor to inform him in regard to the measures adopted, or proposed to be adopted, on the part of Russia in relation to the admission of American vessels into the harbors, bays, and rivers of the Russian settlements on the northwest coast of the American continent. The happy understanding which prevails between the two governments, the desire to avoid any casual difference, and the probable necessity for corresponding measures, will readily indicate the motives which prompt this request.

The undersigned cannot close this note without repeating, very earnestly, his wish to be put in possession of the answer of the Imperial Ministry upon the two subjects to which their attention is directed.

The undersigned, &c.,

WM. WILKINS.

Count Nesselrode to Mr. Wilkins.

[TRANSLATION.]

ST. PETERSBURG, *November 8, 1835.*

The undersigned, as he had the honor to announce, did not fail to submit to the Department of Finance the subject of the memorandum addressed to him on the 23d October (4th November), by Mr. Wilkins, envoy extraordinary and minister plenipotentiary of the United States of America, respecting the renewal of the fourth article of the treaty of April, 1824.

The undersigned, as soon as he has obtained the opinion of the proper authorities and received the orders of the Emperor, will immediately communicate to Mr. Wilkins the point of view under which the proposition of his Government is regarded here. He, however, requests Mr. Wilkins to bear in mind that the Imperial Government, in examining this proposition, will lose sight of none of those considerations which should induce it more strongly to cement the amicable relations now existing between the two governments.

Contenting himself, for the present with this answer to the note of Mr. Wilkins of the 1st (13th) of November, the undersigned seizes, &c.,

NESSELRODE.

No. 45.

Mr. Wilkins to Mr. Forsyth.

[No. 16.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, *December 11, 1835.*

SIR:

* * * * *

As I anticipated, when I last wrote, I held with Count Nesselrode, at the foreign office, on Monday last, the 7th instant, a personal conference upon my proposition to renew, either indefinitely or for a term of years, the fourth article of the treaty of April, 1824, and I regret to be compelled to say that, in this effort, at all events for the present, I have been unsuccessful; and I presume the overture will be finally altogether rejected, unless some new and, to me, unforeseen circumstances turn up.

I was well aware that I should have to encounter the decided opposition of the Russian American Fur Company; and in presenting the subject to the Vice-Chancellor, in the various lights in which it struck my mind, I took the ground that it was not a mere interested and selfish question of gain in the traffic upon the northwest coast, but one of a higher character, involving political and national considerations; that, whilst I was very willing to admit the more active commercial enterprise and superior shipping of the citizens of the United States, yet this was a question not to be decided by such circumstances, but should turn upon the consideration of our national good-will and our amicable and disinterested reciprocal intercourse. * * *

Inasmuch as it seemed to me, by the language of your instructions, that you preferred an indefinite revival of the fourth article, I drew up, to that effect, the form of a treaty, following, as a precedent, the articles of our convention with England of the 6th of August, 1827; which I submitted to, and, at his desire, left in the possession of Count Nesselrode. A copy is herewith transmitted.

At the close of the conference, I requested Count Nesselrode to give me his reply in writing. He acquiesced, and accordingly sent me his official note, dated on the 28th ultimo (old style), and a copy of which I have, also, the honor to enclose to you.

During our conference, I did not feel myself authorized to call the attention of the Imperial Minister to what might, or probably would be, the construction by the United States upon the treaty, with the fourth article extinct; nor what rule of the law of nations would be considered as applicable to the case, and controlling the trade upon a wild and extensive American coast, of a great and open ocean, and still, with the exception of a very few posts at a vast distance from each other, in the rightful occupancy of the natives, and to which, I believe, the sovereignty of Russia has not yet, in any treaty or convention, been admitted.

I found, also, upon turning to the treaty of 1825, between Russia and Great Britain, subsequent to writing my note of the 1st (13th) of last month, to Count Nesselrode, that my reference therein to the first and eleventh articles of our treaty of the 6th (18th) December, 1832, with this country, had no bearing upon and was inapplicable to the question I was then discussing; because the stipulations in their treaty with Great Britain, similar to that contained in our fourth article, were likewise limited to ten years, and had expired in February last. At the interview on Monday last, I gave this explanation to Count Nesselrode, who answered my observations by saying that England had not yet applied for a revival of the mutual privilege, and if it should be agreed to with that power, would, of course, and of right by treaty stipulation, be immediately given to the United States.

* * * * *

I am informed that our vessels generally trade between latitudes 50° and 57°, and, occasionally, go still further north. The English are always to be found on the coast, have trading-posts established along it, some of which are south of latitude 54° 40'.

The principal establishments of the Russians are called Sitka and New Archangel, towns situated upon adjacent islands of their respective names, off Norfolk sound, and in latitude 57° north. Archangel is their chief place, where they keep up a garrison, established in 1800, of about seven hundred men. They have other trading-posts, and two or three small garrisons between Behring's straits and Sitka. In the winter season, when their people are all collected at the posts upon the coast, they amount to about two thousand. They now build vessels upon the coast, and are increasing the number. Last year they had four or five ships of a burden from one hundred and

seventy-five to two hundred and fifty tons, and seven or eight sloops, or smaller vessels. of about one hundred tons each.

* * * * *

I have, &c.,

WILLIAM WILKINS.

[ENCLOSURE 1 IN MR. WILKINS' NO. 16.]

Draft of a convention renewing indefinitely the fourth article of the treaty of the 5th of April, 1824, between the United States of America and the Emperor of all the Russias.

ARTICLE I. The provisions of the fourth article of the convention, concluded between the United States of America and His Imperial Majesty the Emperor of all the Russias, on the 5th (17th) of April, 1824, shall be, and they are hereby, renewed and indefinitely extended and continued in force in the same manner as if all the provisions of the said article were herein specially recited.

ARTICLE II. It shall be competent, however, to either of the high contracting parties, in case either should think fit, at any time after the 1st day of January, 1837, on giving due notice of twelve months to the other party, to annul and abrogate this convention, and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice.

ARTICLE III. Nothing herein contained shall be construed to impair, or in any manner affect, further than is expressly declared above, any of the provisions or stipulations contained in the aforesaid convention of the 5th (17th) of April, 1824.

[ENCLOSURE 2 IN MR. WILKINS' NO. 16.]

Count Nesselrode to Mr. Wilkins.

[TRANSLATION.]

ST. PETERSBURG, November 28, 1835.

The Imperial Government having taken into consideration the proposition made by that of the United States, to renew the fourth article of the convention of 5th (17th) of April, 1824, has been convinced that it was impossible to pronounce upon that subject until information had been received from the places where the said article would be enforced, sufficient to authorize an opinion upon the propriety of such a measure. The Imperial Government cannot, however, expect to receive such information until towards next spring, when it may be obtained from some of its officers, whom a long residence on the northwest coast of America has enabled to become well acquainted with the interests and wants of the Russian establishments in those countries, as well as the influence already exercised upon their prosperity by the provisions of the said fourth article.

* * * * *

NESSERODE.

No. 46.

Mr. Forsyth to Mr. Dallas.

[No. 3.]

DEPARTMENT OF STATE,

WASHINGTON, May 4, 1857.

SIR:

I regret to have occasion so soon again to advert to a subject connected with the claims of the United States to the right of trading with the natives of the country, and of fishing, on the northwest coast of this continent. You will perceive from a perusal of the accompanying papers, that the expiration of the 4th article of the convention of 1824 with Russia, is not unlikely to be attended with difficulties to our citizens frequenting that coast in pursuit of lawful objects. The leading features of the case to which your attention is now invited,—the particulars of which are more fully detailed in the enclosed copy of a letter dated 24th November last, from J. C. Jones, consul of the United States at the Sandwich islands, to this department, and of the protest to which it refers,—are as follows: *

The American brig "Loriot," Blinn, master, sailed from the port of Oahu on the 22d August last, bound to the northwest coast of America, for the purpose of procuring provisions, and also Indians to hunt for sea otter on the said coast. It appears that she made the land called Forrester's island on the 14th of September following, and on the 15th anchored in the harbor of Tuckessan, latitude $54^{\circ} 55'$ north, and longitude $132^{\circ} 30'$ west; that on the 18th a Russian armed brig arrived in the harbor of Tateskey, latitude $54^{\circ} 45'$ north, and longitude $132^{\circ} 55'$ west; that on the succeeding day the "Loriot" was boarded by officers from the Russian brig, who ordered the captain of the American vessel to leave the dominions of his Majesty the Emperor of Russia; that Captain Blinn then repaired on board the Russian brig, where the same orders were repeated to him by the commander; that on the 20th and 23d days of the same month these orders were reiterated; that on the 25th the "Loriot" was boarded by two armed boats from the Russian brig, and directed to get under weigh and proceed to the harbor of Tateskey; that on the 27th the armed boats again boarded the American brig, and compelled the captain to proceed to Tateskey: that when off that place, the weather being threatening, permission was asked of the Russian commander to enter the harbor with the "Loriot," which request was denied, and Captain Blinn was again ordered to leave the waters of his Imperial Majesty; and that Captain Blinn, being prevented from procuring supplies or necessaries for his vessel, and from obtaining any Indians (for the purpose of hunting sea otter) was finally obliged to abandon his voyage and return to the Sandwich Islands, where he arrived on the 1st of November of the same year.

The harbors designated in Captain Blinn's protest by the names of Tuckessan and Tateskey are not laid down on any map to which I have

* For these papers see Senate Documents 1, 25th Congress, 3d Session.

referred, and the department has no knowledge of any Russian establishments having been formed on the northwest coast or adjacent islands, in or about the latitude given for these places. It will, therefore, be proper to ascertain whether there are, in fact, Russian settlements at the points designated, and, if so, you are authorized to make a representation of the whole subject to his Imperial Majesty's Government, complaining of the proceedings in relation to the "Loriot," which are supposed to have been unauthorizedly instigated by the Russian American Fur Company, and stating that the President cannot but regard this act as one of a most unfriendly character, as the United States have had no official or other notice of the existence of such establishments, and have not, although an application has long since been made for them, ever been furnished by the Russian Government with the regulations, consequent on the expiration of the 4th article of the convention, proposed to be applied to American vessels resorting to Russian settlements on that coast.

On the other hand, should there prove to be no Russian establishments at the places mentioned, this outrage on the "Loriot" assumes a still graver aspect. It is a violation of the right of the citizens of the United States, immemorially exercised, and secured to them as well by the law of nations as by the stipulations of the first article of the convention of 1824, to fish in those seas, and to resort to the coast, for the prosecution of their lawful commerce upon points not already occupied. As such, it is the President's wish that you should remonstrate, in an earnest but respectful tone, against this groundless assumption of the Russian Fur Company, and claim from His Imperial Majesty's Government for the owners of the brig "Loriot," for their losses and for the damages they have sustained, such indemnification as may, on an investigation of the case, be found to be justly due to them.

I am, &c.,

JOHN FORSYTH.

No. 47.

Mr. Dallas to Mr. Forsyth.

[No. 6.]

AMERICAN LEGATION,

ST. PETERSBURG, *August 16, 1837.*

SIR:

* * * * *

Among the special duties assigned to me in the instructions from the department, are those relating to the renewal of the 4th article of the treaty of 1824, by your despatch No. 2, and those arising out of the case of the American brig, "Loriot," Richard D. Blinn, master, by your despatch No. 3. I have been anxious to address myself to the Imperial Ministry on both these topics, the mutual connection of which is apparent; but anticipating, at the outset, much difficulty in accomplishing any purpose opposed by the

Fur Company, prudence impels me to acquire, if possible, with more accuracy than I now possess it, information as to the extent of the Russian establishments on the northwestern coast, and the periods of their respective commencements. My efforts in London to ascertain the positions of the two harbors referred to by Captain Blinn, Tuckessan and Tateskey, and their real character, were abortive; the geographer on whom I principally relied writing to me, the evening before I left the British metropolis, that his searches proved unproductive. An inquiry, to be cautiously conducted, has been set on foot since my arrival here, in the hope that some of the officers of the Russian navy, or some communicative member of the Fur Company itself, may possess the facts I want, and may enable me to move with less doubt and less danger of mistake. Although from the language of Captain Blinn's protest, I am led to believe that Russian establishments have been made at the places where he experienced the interference of which he complains, it would not seem politic to begin the negotiation by an admission, which, though it might leave the unfriendliness of the proceeding for comment, must weaken, if not wholly destroy, his claim for redress. As soon as the inquiry instituted shall either succeed or fail, the subject will be opened to Count Nesselrode, and I cannot anticipate more than one or two weeks of additional delay.

Permit me, while on this topic, to remark, that I cannot help foreseeing some perplexity from the construction which will be urged by the Russian Ministry for the treaty of 17th April, 1824. The *first* article asserts for both countries general and permanent rights of navigation, fishing, and trading with the natives upon points not occupied by either, north or south of the agreed parallel of latitude, subject to enumerated restrictions, among which is the *fourth article*, limiting, as it would seem, the exercise of certain of these very rights to a term of ten years. Our negotiator, Mr. Middleton, as he explained in a subsequent despatch to the Department of State, contemplated no abandonment of their rights either in principle or as a compromise, in the present or future time, but on the contrary repelled a clause proposed to him expressly for that purpose, and regarded the fourth article as enlarging, not restricting, the privileges provided for in the first. My conviction, however, arising from the language of the Russian precautionary record or protocol (which Mr. Middleton rather avoided than rejected), is that Count Nesselrode will deem himself and Mr. Poletica to have attained by this fourth article, though with the use of other words, the substance of the clause to which Mr. Middleton objected, and that he will consider both Governments to have buried all controversy about the rights incident to the prior discovery of savage and unoccupied lands, and to have consented that, at the expiration of the ten years, the United States should be esteemed to possess in full domain the coast and islands to the south, and Russia the coast and islands to the north, of 54° 40' north latitude. He may ask, and with some plausibility, with what other object the fourth article was framed? It uses no phraseology tantamount to "*establishments*."

or "*settlements*," or "*points already occupied*;" but protects from any hindrance for ten years only the power to frequent the interior seas, gulfs, harbors, and creeks upon the coast, for the purpose of fishing and trading with the natives; a power already duly enunciated *without limit of time*, for both countries, by the first article; and, if it was not intended mutually to yield the power in relation to the sections divided by the parallel of latitude at the expiration of the term, why disturb the operation of the first article at all? A closer analysis of the negotiation of 1824 may possibly dispel these suggestions; or it will give me pleasure to find my apprehensions removed by the candor of the Vice-Chancellor; and, at all events, I shall never acquiesce, until instructed to do so by you, in a construction so opposite to the intentions of Mr. Middleton, and so conclusive as to all further claim of the United States.

* * * * *

I have, &c.,

G. M. DALLAS.

No 48.

Mr. Dallas to Mr. Forsyth.

[No. 7.]

AMERICAN LEGATION,
ST. PETERSBURG, *September 8, 1835.*

SIR:

Since my last, dated the 16th of August, 1835, and sent by the courier of the English legation; I have addressed to Count Nesselrode the communication of which a copy is annexed.

* * * * *

I have, &c.,

G. M. DALLAS.

[ENCLOSURE IN MR. DALLAS' NO. 7]

Mr. Dallas to Count Nesselrode.

AMERICAN LEGATION, *August 15 (27), 1837.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor very respectfully to invite the attention of his excellency the Vice-Chancellor of the Empire to the following subject, specially given to him in charge as calling for an early submission to the consideration of the Imperial Government.

It will doubtless be remembered that by the perpetual convention of the 5th (17th) of April, 1824, signed by his excellency Count Nesselrode and Mr. Poletica on behalf of Russia, and by Mr. Henry Middleton on behalf of the United States, it was agreed that in any part of the great ocean commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers should be neither disturbed nor restrained, either

in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives; that, to prevent the rights of navigation and of fishing, exercised upon the great ocean, from becoming the pretext for an illicit trade, the citizens or subjects of either country should not resort, without permission, to any establishment of the other; and that there should not be formed to the north of fifty-four degrees and forty minutes of north latitude by the citizens of the United States, nor south of that parallel by Russian subjects, any establishment upon the northwest coast of America. It was declared by the fourth article to be understood that during a term of ten years, counting from the signature of the convention, the ships of both countries respectively might reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks upon the said coast, for the purpose of fishing and trading with the natives.

The permanent powers to navigate, to fish, and to resort to the coasts upon unoccupied points, in order to trade with the natives, thus mutually recognized in a spirit of forecasting friendship, which removes, by explicit assurances, every possible cause of collision or jealousy, and has always characterized the relations and intercourse of the two governments, would seem to be unequivocally distinct and precise. It is to a vague and perverted condition of things, consequent, in a great degree, upon the expiration of the temporary provision of the fourth article, much rather than to any inimical national policy, that the undersigned imputes the incident, so detrimental to the interest of an American citizen and so incompatible with the rights of his country, which is now submitted to the just and candid consideration of his excellency Count Nesselrode.

[Here follows a statement of the case of the "Loriot," substantially the same as that given above in No. 46.]

The undersigned is unwilling to make to his excellency Count Nesselrode the remarks naturally suggested by this brief statement of facts (whose authenticity he cannot doubt), until every reasonable and just opportunity shall have been given to the Russian officers implicated to temper, if possible, their harshness by explanation. His firm confidence in the dispositions heretofore expressed and manifested towards his country precludes his supposing, for one moment, that a proceeding so unfriendly in its nature and circumstances, and so inconsistent with the rights of American citizens, immemorably exercised and secured by the laws of nations, as well as by the stipulations of the first article of the treaty of 1824, was authorized by His Imperial Majesty's Government, or can receive its sanction.

Nevertheless, it is made the duty of the undersigned earnestly and most respectfully to remonstrate against such an unwarranted aggression by persons enjoying the character and using the means of agents in the Russian service, and to claim, as he now does, from His Imperial Majesty's Government, for the losses and damages sustained by the owners of the brig "Loriot," such indemnification as may, on an investigation of the case, be found just to their due.

In the sincere hope that an early and happy adjustment of this business may arrest its tendency to excite unkindness of feeling between the citizens and subjects of the two countries, the undersigned avails, &c.

G. M. DALLAS.

No. 49.

Mr. Forsyth to Mr. Dallas.

[No. 4.]

DEPARTMENT OF STATE,

WASHINGTON, *November 3, 1837.*

SIR:

Your despatches, Nos. 6 and 7, of the 16th of August and 8th of September, respectively, have been duly received, and submitted to the President, by whom I am directed to make the following observations, with reference to your remarks regarding the proper construction of the convention of April, 1824, between the United States and Russia.

The first article of that instrument is only declaratory of a right which the parties to it possessed, under the law of nations, without conventional stipulations, to wit: to navigate and fish in the ocean upon an unoccupied coast, and to resort to such coast for the purpose of trading with the natives.

The second article prohibits the one party from resorting to points, occupied by the other, without permission.

The third article prevents each party from occupying new points within certain limits.

The fourth article grants permission to either party to frequent, for a specified term, the interior seas, gulfs, harbors, and creeks, upon the whole northwest coast of America, without regard to limits or occupation, for the purpose of fishing and of trading with the natives of the country.

The question is as to the meaning and object of this last mentioned article. Is it to be interpreted as an agreement by either of the parties to abandon, after a specified term, the right to resort to any part of the coast which is unoccupied?

If the fourth article is to be considered as applicable to ports of the coast unoccupied, then it merely provides for the temporary enjoyment of a privilege which existed in perpetuity, under the law of nations, and which has been expressly declared so to exist by a previous article of the convention. Containing no provision, therefore, not embraced in the preceding article, it would be useless, and of no effect. But the rule in regard to the construction of an instrument, of whatever kind, is, that it shall be so construed, if possible, as that every part may stand.

If the article be construed to include points of the coast already occupied, it then takes effect, thus far, as a temporary exception to a perpetual prohibition, and the only consequence of an expiration of the term to which it is limited would be the immediate and continued operation of the prohibition.

It is still more reasonable to understand it, however, as intended to grant permission to enter interior bays, etc., at the mouths of which there might be establishments, or the shores of which might be in part, but not wholly, occupied by such establishments; thus providing for a case which would

otherwise admit of doubt, as without the 4th article it would be questionable whether the bays, etc., described in it belonged to the first or second article.

In no sense can it be understood as implying an acknowledgment on the part of the United States of the right of Russia to the possession of the coast above the latitude of $54^{\circ} 40'$ north. It must be taken in connection with the other articles of the convention, which have, in fact, no reference whatever to the question of the right of possession of the unoccupied parts of the coast. In a spirit of compromise, and to prevent future collisions or difficulties, it was agreed that no new establishments should be formed by the respective parties to the north or south of a certain parallel of latitude, after the conclusion of the agreement; but the question of the right of possession beyond the existing establishments, as it subsisted previously to, or at the time of, the conclusion of the convention, was left untouched. The United States, in agreeing not to form new establishments to the north of latitude $54^{\circ} 40'$ north, made no acknowledgment of the right of Russia to the territory above that line. If such an admission had been made, Russia, by the same construction of the article referred to, must have acknowledged the right of the United States to the territory south of the designated line. But that Russia did not so understand the article, is conclusively proved by her having entered into a similar agreement (1825) with Great Britain; and having, in fact, acknowledged in that instrument the right of possession of the same territory by Great Britain. The United States can only be considered as acknowledging the right of Russia to acquire, by actual occupation, a just claim to unoccupied lands above the latitude $54^{\circ} 40'$ north, and even this is mere matter of inference, as the convention of 1824 contains nothing more than a negation of the right of the United States to occupy new points within that limit.

Admitting that this inference is just, and was in contemplation of the parties to the convention, it cannot follow that the United States ever intended to abandon the just right acknowledged by the first article to belong to them under the law of nations,—to frequent any part of the unoccupied coast of North America for the purpose of fishing or trading with the natives. All that the convention admits is an inference of the right of Russia to acquire possession by settlement north of $54^{\circ} 40'$ north. Until that actual possession is taken, the first article of the convention acknowledges the right of the United States to fish and trade as prior to its negotiation. This is not only the just construction, but it is the one both parties are interested in putting upon the instrument, as the benefits are equal and mutual, and the object of the convention, to avoid converting the exercise of a common right into a dispute about exclusive privilege, is secured by it.

I am, &c.,

JOHN FORSYTH.

No. 50.

Mr. Dallas to Mr. Forsyth.

[No. 15.]

LEGATION OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, *March 19, 1838.*

SIR:

The departure of a courier from the British Legation to-morrow, enables me to forward to you copies of two notes which have recently passed between Count Nesselrode and myself. They originate in the claim advanced on behalf of the owners of the "Loriot," agreeably to your instructions of the 4th of May, 1837. Their interest, however, is far more extensive; the demand for private indemnity being merged in a question of national right, and the interpretation of the treaty negotiated in 1824 by my predecessor, Mr. Middleton.

* * * * *

I have, &c.,

G. M. DALLAS.

[ENCLOSURE I IN MR. DALLAS' NO. 15.]

Count Nesselrode to Mr. Dallas.

[TRANSLATION.]

ST. PETERSBURG, *February 23, 1838.*

Mr. Dallas, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, by his note of the 15th (27th) of August last, has thought proper to interpose in behalf of the claims preferred by Richard Blinn, a citizen of the United States, and master of the merchant brig "Loriot." It appears from the above-mentioned note, that in 1836, this vessel having sailed for the northwest coast of America, arrived at Forrester's island, in latitude of 54 degrees 55 minutes north, with the intention of employing the natives in hunting for sea-otters, and that a few days after his arrival he was ordered off by a brig of the Russian American Company, without having been able to pursue his project. Mr. Blinn, in virtue of the stipulations of the convention of the 5th (17th) of April, 1824, and especially of the 1st article of that convention, now prefers complaints against the conduct of the Russian brig towards him; and asks indemnification for the losses sustained in consequence, by the proprietors of the "Loriot."

A claim of this nature, presented, too, by the representative of a power with which Russia is anxious to cultivate the most friendly relations, demanded the most serious attention on the part of the Imperial ministry. The Russian American Company was accordingly asked, without delay, for minute information respecting all the circumstances connected with the above-mentioned facts, in order that it might be examined with an entire knowledge of the affair. This information has not yet reached the Imperial ministry, as the Russian American Company has not to this moment received any special report concerning the ordering off of the "Loriot." It appears, however, from the circumstances as stated in the very note of Mr. Dallas, as well as

from a deposition made by one of the officers recently returned from those countries, that in notifying Mr. Richard Blinn to quit the shores where he was, the commander of the Russian brig did nothing more than conform with the instructions given to him, at the expiration of the 4th article of the convention.

By examining the stipulations of that convention, with the spirit of equity which marks the character of Mr. Dallas, he will be convinced that the Imperial Government cannot acknowledge the justice of the complaints of Mr. Blinn.

It is true, indeed, that the 1st article of the convention of 1824, to which the proprietors of the "Loriot" appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance upon all points on the northwest coast of America, not already occupied, and to trade with the natives. But this liberty of navigation is subject to certain conditions and restrictions, and one of these restrictions is that stipulated by the 4th article, which has specially limited to the period of ten years the right on the part of the citizens of the United States to frequent, without disturbance, the interior seas, the gulfs, harbors, and creeks, north of the latitude of 54 degrees 40 minutes. Now this period had expired more than two years before the "Loriot" anchored in the harbor of Tuckessan. In 1835 the Emperor's minister in the United States had received orders to call the attention of the cabinet at Washington expressly to the circumstance of the expiration of this period; and in consequence of the official note addressed on this subject by Baron de Krudener to the Secretary of State, the Government of the United States caused to be published, in the Washington newspaper, a statement that, as the period of ten years had expired on the 4th of April, 1834, "the Governor of the Russian colonies had formally notified the commanders of American vessels in that quarter that they could no longer claim, under the convention, the right of landing without distinction, at all the harbors belonging to Russia, on this coast."

If, then, notwithstanding so formal a warning which the Government of the United States had itself aided in conveying to the knowledge of the citizens of the Union, the owners of the "Loriot" ventured upon an expedition to coasts where they had for two years been interdicted from landing it appears that they should attribute only to themselves the ill success of this enterprise, and that the Imperial Government cannot admit their claims, nor acknowledge their title to indemnification. In communicating these observations to Mr. Dallas, the undersigned flatters himself with the belief that he will admit the justice of them, and cause them to be viewed in the same light by his Government.

In this hope he prays the envoy to accept, &c.,

NESSELRODE.

[ENCLOSURE 2 IN MR. DALLAS' NO. 15.]

Mr. Dallas to Count Nesselrode.

ST. PETERSBURG, 5th (17th) March, 1838.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, had the honor to receive the answer of his excellency Count Nesselrode, Vice-Chancellor of the empire, dated the 23d February, 1838, to the communication which the undersigned, conformably

to the special charge of his Government, addressed to his excellency on the 15th (27th) of August, 1837, in relation to the interference of certain of his Imperial Majesty's armed forces with the merchant brig "Loriot," owned and commanded by citizens of the United States, and prosecuting a trading voyage to the northwest coast of America.

The remoteness of the regions where the incidents occurred, which constitute the foundation of the reclamation on behalf of the parties injured, and the known difficulty of obtaining circumstantial details of any event in that quarter, connected with the assurance of his excellency that the Imperial Ministry had given to the subject its serious attention, must have engaged the undersigned to protracted silence, under the conviction that every thing which the justice of the case required, would ultimately be attained. The note, however, of his excellency, if accurately understood, dispenses with the necessity of additional information, and, adopting the statement of facts derived by the American Government from its citizens, would seem to remove all motive for further delay. An early notice, therefore, of the grounds upon which a recognition of the claim has been declined, is impelled alike by a profound respect for the source whence they emanate, and by a sense of the peculiar importance with which they bear upon the relations and interests of the two countries.

The light in which the President of the United States regarded the treatment of Captain Blinn, precluded the possibility of his supposing it warranted by the public authorities of Russia. He will bear, with painful surprise, that the subordinate, by whom that treatment was inflicted, did but obey the instructions with which he had been furnished in consequence of the expiration of the fourth article of the convention of 1824. It will be recollected that more than two and a half years ago, the American Secretary of State, Mr. Forsyth, in a letter of the 21st of July, 1835, addressed to his Imperial Majesty's Minister then at Washington, the Baron de Krudener, expressed a wish to receive, as early as practicable, precise information of the measures his Imperial Majesty's Government had adopted or proposed to adopt in relation to the admission of American vessels into the harbors, bays, and rivers of the Russian settlements on the northwest coast of the continent; that this request was reiterated by Mr. Wilkins, the predecessor of the undersigned, in a communication of the 1st of November, 1835; and that his excellency Count Nesselrode, in answer thereto, referring to the spring of 1836 as the earliest period at which an exact knowledge could be obtained of the measures which the local authorities had adopted, or which it would be necessary to adopt, left no room to doubt that they would then, or as soon as digested, be made known to the American Government. This information, so desirable as a basis for any corresponding measures to which the United States would have been urged by their uniform dispositions of amity towards Russia, as well as by a provident attention to the regularity and security of their own commerce, has never been imparted. Had the purport of the instruction, under which the "Loriot" was violently seized and driven from her voyage, been communicated, it would not have been allowed to work injury and loss to unoffending persons, without at least being first made the object of candid remonstrance, or of precautionary notice. And the President of the United States, unapprized of these regulations, or of the particular points of the northwest coast on which Russian establishments were newly formed, could not but view the abrupt proceeding to which Captain Blinn was subjected, as an act, under any aspect, of the most unfriendly character. How far this sentiment will be changed or qualified by unexpectedly finding the slight on the American flag, and the armed opposition to American trade, to have been ordered, and to be now

sanctioned, by the Government of his Imperial Majesty, upon the principles stated, the undersigned cannot venture to foresee.

Nor is the "informal notice" (lying before the undersigned) published, at the repeated request of Baron de Krudener, in the Washington "Globe" of the 22d of August, 1835, to which his excellency has referred, susceptible, in the estimation of the undersigned, of a construction which can ascribe to the American Government, or any of its citizens, the knowledge that a voyage like the one contemplated by Captain Blinn was inconsistent with any colonial interdict or general pretension of the Imperial authorities. Far from it. That publication, while characteristic of the frank and confiding readiness with which the American Executive proceeded to execute a wish expressed by a power whose intercourse and relations inspire no distrust, compels, as is conceived, with unfeigned deference, the opposite construction, and imports a recognition of the entire lawfulness of such a voyage. In this spirit, and in this only, was it originally framed, and has ever since, without a question, been understood by the Government and people of the United States. True, it adverts to a notice issued by the Governor of the Russian colonies after the expiration of the 4th article of the Convention, to the effect that the masters of American vessels could no longer claim the right they enjoyed under that 4th article of landing, at all the landing places, without distinction, belonging to Russia on the northwest coast; and it further proceeds to observe to all interested in the trade that, under the 2d article of the same convention, it is necessary for all American vessels resorting to any point where there is a Russian establishment, to obtain the permission of the governor or commander. To the scope or phraseology of this "informal notice," it is believed Baron de Krudener never, orally or in writing, took the slightest exception. It will surely be perceived by his excellency Count Nesselrode, to contain no inhibition of trading voyages generally to the northwest coast of America; but, on the contrary, to confine its admonition expressly and precisely to "*landing places belonging to Russia*," and to "*any point on the coast where there is a Russian establishment*." Such landing places, and such points were alone supposed to be embraced in the notice of Governor Wrangel, and were alone designated in the publication. American voyages to them were no longer as unembarrassed as during the operation of the 4th article of the convention; but to all other points of that vast and wild territory, the freedom of American navigation and trade remained unimpaired. It formed no part of the purpose of Captain Blinn to visit, with or without permission, any landing place or point distinguished by Russian occupancy or establishment; and it is, therefore, submitted that, even supposing him to have read the paragraph adduced, he could, at least, deduce from it nothing adverse to his voyage.

The decision of the Imperial Ministry is stated by his excellency the Vice-Chancellor to result from the very circumstances set forth in the note of the undersigned, as well as from an affidavit of an officer recently returned from the Russian colonies, and to be founded upon the convention of 1824. As the contents of the affidavit are not mentioned, they are presumed not to affect materially the narrative of the note, and certainly not to introduce any substantive assertion or denial adequate to give the case a totally new character, and to exact, by its own force merely, a judgment which could not be reached without it. The remarks, therefore, which the undersigned proposes to subjoin, are necessarily restricted to the admitted allegations on behalf of Captain Blinn, in connection with the stipulations of the treaty.

If, in pursuing this course, any injustice be done to the reasoning or views of the Imperial Ministry, he will, on the slightest intimation, hasten to rectify it with the frankness which he esteems indispensable to the faithful discharge of his representative duty.



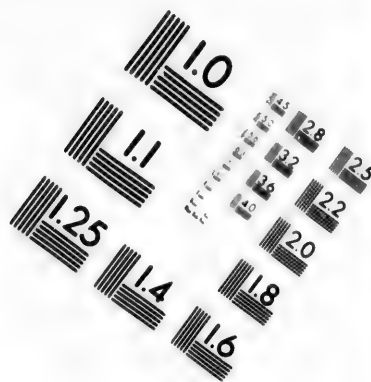
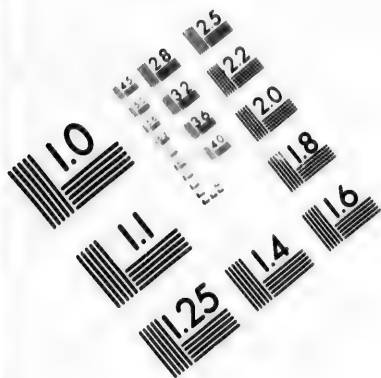
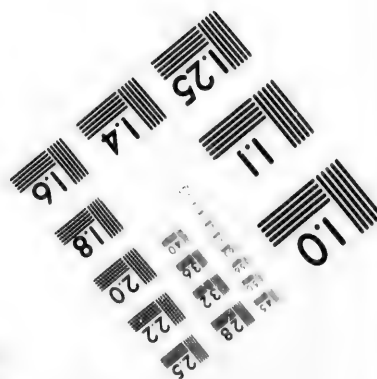
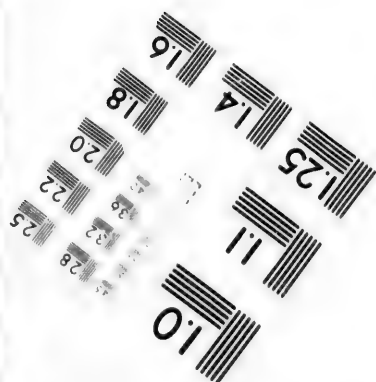
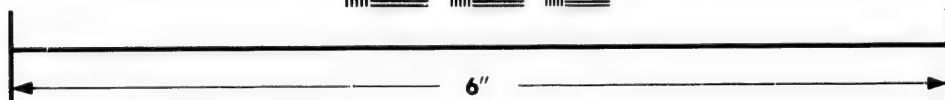
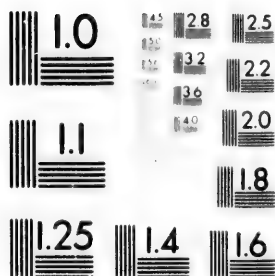


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Avoiding a repetition of details heretofore enumerated, as well as their aggravating features, the leading facts of reclamation are, that the brig "Loriot," owned and commanded by American citizens, sailed from the Sandwich Islands on the 22d of August, 1836, bound to the northwest coast, to procure provisions and Indians for hunting sea otter; that having made Forrester's island, she anchored in the harbor of Tuckessan, in latitude $54^{\circ} 55'$ north; that no Russian establishment existed in that harbor; that four days afterwards, an armed brig of his Imperial Majesty's navy went into a neighboring harbor, called Tateskey, in latitude $54^{\circ} 45'$ north; that no Russian establishment existed in this latter harbor; that she was boarded by officers from the armed brig, by whom her captain was first ordered to leave the dominions of Russia, and subsequently compelled to get under way and sail for the harbor of Tateskey; that when off the harbor of Tateskey she was, in threatening weather, refused permission to enter, and peremptorily again commanded to quit the waters of his Imperial Majesty; and, finally, that, owing exclusively to this interference of armed force, her voyage was abandoned, and she returned to the Sandwich Islands on the 1st of November. It is this plain and brief story, which the undersigned, by instruction of his Government, has termed inconsistent with the rights of American citizens, immemorably exercised and secured by the laws of nations, as well as by the stipulations of the first article of the convention of 1824, and entitling the parties injured to such indemnification as might on an investigation be found justly their due.

The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the northwest coast of America, without the jurisdiction of other nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties, and incapable of being abridged or extinguished, except with their own consent. It is unknown to the undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by treaty or other form of obligation, in favor of any community. Yet he deduces from the communication of his excellency, after having given it the careful consideration to which every act from such a source lays claim, as the only ground upon which the reclamation on behalf of Captain Blinn is resisted, the proposition that the United States, by the convention of 1824, yielded to his Imperial Majesty the right to hold commerce, on the expiration of ten years, with the aboriginal natives on the northwest coast beyond the degree of $54^{\circ} 40'$ north latitude. This proposition, if established, is unquestionably fatal to the pretensions of the master and owners of the "Loriot." It bears, however, an aspect so detrimental to the interests of his countrymen, and to their attributes as an independent power, is so inconsistent with the past policy and principles of the American cabinets, and is withal of such minor importance to the prosperity and greatness of Russia, that the undersigned trusts its want of solid foundation will, on further reflection, be apparent and confessed.

The avowed objects of the convention between the United States and His Imperial Majesty, were "to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord." The means of attaining these invaluable ends were embodied in its articles. There is first a mutual and permanent agreement, declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with

the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of $54^{\circ} 40'$ north latitude; but that, *nevertheless*, both might for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbors and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

The view taken by his excellency Count Nesselrode, rests upon the provision last referred to, contained in the fourth article of the convention. Of this it is essential to fix the true character. Does its limitation of ten years apply to the broad national right of resorting to unoccupied points of the coast? If it do not, the position taken is untenable. That it does not, would seem to be a conclusion of the gravest, as of the lightest scrutiny.

The renunciation of a prerogative so high and important, if designed would not have been left to mere inference from a disjointed paragraph, but would have been distinctly expressed in immediate connection with its first statement. No motive can possibly be assigned for permitting an intended abandonment of such a right, formally declared in the first article, to lurk unseen in the varied language of the fourth article.

The power of resorting to unoccupied points of the coast existed in perpetuity by the laws of nations, and is so enunciated in the first article. To declare it afterwards to exist for ten years would be to insert a clause idle and without effect, providing for the temporary enjoyment of what had been previously pronounced permanent. But the interpretation of every instrument must be such as will, if possible, give substance and utility to each of its parts. Applied to points of the coast already occupied, the fourth article takes effect as a temporary exception to the perpetual prohibition of the second article; and the only consequence of the expiration of the term to which it is limited, is the revival and continued operation of that prohibition.

In employing, in the fourth article, the descriptive words "interior seas, gulfs, harbors, and creeks," there is a departure from the comprehensive phraseology of the first article, which is only to be explained by the fact that another idea was to be expressed. Nor is it difficult to understand what was really meant. The bonds of amity and perfect concord, which it was so desirable to cement and invariably maintain, would have been endangered, in peculiar localities, as to which doubts might naturally arise whether they were embraced in the first or the second article. If, however, at their openings, or upon their commanding highlands, or on their shores, an occupied point or establishment existed, it was thought expedient to let them take character from that incident, without any nice measurement of its range or influence, at the expiration of ten years; and, accordingly, the fourth article, avoiding too sudden a check of the actual account of trade, put a limit of time upon the liberty to frequent such places.

The undersigned submits that in no sense can the fourth article be understood as implying an acknowledgement, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of $54^{\circ} 40'$ north. It must, of course, be taken in connection with the other

articles, and they have, in fact, no reference whatever to the question of the right of possession of the unoccupied parts. To prevent future collisions it was agreed that no new establishment should be formed by the respective parties to the north or south of the parallel mentioned; but the question of the right of possession beyond the existing establishments, as it stood previous to, or at the time of, the convention, was left untouched.

By agreeing not to form new establishments north of latitude $54^{\circ} 40'$ the United States made no acknowledgement of the right of Russia to the territory above that line. If such an admission had been made, Russia, by the same construction of the article referred to, must have equally acknowledged the right of the United States to the territory south of the parallel. But that Russia did not so understand the article is conclusively proved by her having entered into a similar agreement in her subsequent treaty of 1825, with Great Britain, and having in that instrument, acknowledged the right of possession of the same territory by Great Britain.

The United States can only be considered inferentially as having acknowledged the right of Russia to acquire, above the designated meridian, by actual occupation, a just claim to unoccupied lands. Until that actual occupation be taken, the first article of the convention recognizes the American right to navigate, fish, and trade, as prior to its negotiation. Such is esteemed the true construction of the convention; the construction which both nations are interested in affixing, as the benefits are equal and mutual, and the great object is secured of removing the exercise of a common right from the danger of becoming a dispute about exclusive privileges.

At the hazard of proving tedious, the undersigned has thus endeavored to convey to his excellency Count Nesselrode the views suggested by his recent communication.

The Government of the United States is ardent and uniform in its anxiety to cherish with that of Russia the most friendly relations; in the reciprocation of this sentiment the fullest confidence is felt. The citizens and subjects of the two countries, meeting only with feelings of cordiality and for purposes of mutual advantage, are rapidly reaping the fruits of a wise and beneficent international policy. Every year enlarges the sphere of their commercial intercourse, discloses the identity of their interests and strengthens their ties of amity. In the persuasion that the enlightened councils of his Imperial Majesty will join with the American authorities in every effort consistent with the honor and rights of their respective nations, to rescue this condition of things from all danger of interruption, the undersigned earnestly invites a reconsideration of the ground upon which the claim of the owners of the "Loriot" has been dismissed.

With a consoling hope as to the result, he begs, &c.,

G. M. DALLAS.

No. 51.

Mr. Dallas to Mr. Forsyth.

[No. 16.]

LEGATION OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, April 16, 1838.

SIR:

On the 21st of last month I received the answer of Count Nesselrode to the proposal made to him in my communication of the 28th of December, 1837, for the renewal of the fourth article of the convention of 1824; and I

accompanied my acknowledgement of its receipt with a request for information as to the measures adopted, or proposed to be adopted, by His Imperial Majesty, respecting the admission of American vessels into the Russian establishments on the northwest coast. Copies of these two documents are annexed to this despatch. Every act of an official character is preceded by so much deliberation and delay, that I may not hope to hear further on this subject for some weeks to come.

The refusal to renew the article was far from unexpected. Although there may be much truth in the statements upon which that refusal is explained, it was foreseen that the grasping policy of the Fur Company would, in itself, be quite adequate to this result. I am unable to say how far the representation as to the extremely limited character of the American trade under the article be correct, nor how far my countrymen may be implicated in the sale of spirituous liquors, powder, and fire-arms to the natives, in violation of the fifth article of the convention; nor whether complaints on the latter subject have or have not been made by the Russian authorities to those of the United States, invoking in designated cases the penalties prescribed by act of Congress. On none of these points do the archives of this legation furnish sources of information.

Nor would it, indeed, seem expedient, under any circumstances, to criticise the alleged motives for declining a revival of the expired stipulation. No consequence could follow but disagreement in relation to details, when the main point is one exclusively of discretion, is obviously decided beyond the probability of change, and that decision is communicated in the most friendly terms.

By the expiration, in April, 1834, of the ten years limited in the fourth article of the convention, and by the definitive refusal to renew it, the Imperial Government would seem to attain an important object in their northwestern colonial policy, while the United States forego, in fact, nothing but a series of vague claims calculated only to embroil and complicate the relations of the two countries. My predecessor, Mr. Middleton, by whom the convention was negotiated, conceived the article to be a mutual grant, temporary in its duration, extending to specific and particular privileges, which the traders of neither nation would enjoy as general rights. He regarded the liberty to carry on commerce, without any hindrance whatever, with the natives in the interior seas, gulfs, harbors, and creeks of the Russian settlements, as so much added to the range of our trade beyond its natural boundaries; and he anticipated that, before the lapse of the term proposed, the Russian settlers would perceive the importance of our unshackled intercourse, as a sure and economical means for obtaining supplies, and would ultimately prolong it indefinitely. With these views and impressions, during the pendency of the negotiation, he originated the fourth article, which formed no part either of the projet of a treaty sent to him by Mr. Adams, then Secretary of State, or of the projet he submitted to Count Nesselrode at their first conference on the 9th of February, 1824.

The adoption of the article suspended for ten years the necessity of practically discriminating between such places on the northwest coast as were open to a common trade, in consequence of being savage and unoccupied, and those accessible only by permission from a local authority. In other words, there was no immediate call for agreeing and defining what should constitute an "establishment," an "occupancy," or a "settlement," so as to redeem a given spot, with its contiguous territory, from a wild state, and subject them to an exclusive jurisdiction. During the prescribed period, in this particular, everything was left as large as before; and here lies, in my opinion, the chief, if not the only important incident of the refusal to renew the article. It will become necessary now to have some distinct understanding as to the nature and range of the act of colonizing, which shall permanently vest the dominion in either nation. Without this, our commerce in that interesting quarter must be impeded and narrowed, and probably soon entirely destroyed, by the absurd pretensions of the Russian Fur Company.

The stipulated freedom to trade unmolested within the interior seas, bays, creeks, and harbors of the northwest coast, being regarded, under our construction of the treaty, as solely applicable to occupied places, and having ceased upon the expiration of the ten years, it becomes essential to the safe prosecution of American enterprise and traffic in these remote regions, that we should ascertain, if possible, which of the interior seas, bays, creeks, and harbors fall, by actual Russian settlement, under exclusive Russian dominion. Although the facts be extremely difficult to reach, and a powerful monopoly be interested and at work to misrepresent them, still something may be effected by furnishing to our citizens a rule by which to test the character and extent of any occupation whose existence is alleged as an impediment to an intended voyage. And if we cannot spare one or two of our vessels of war to make a thorough examination of the coast, as well as to assert, in defiance of petty obstacles, the national right to trade freely upon unoccupied points, we must be content, however reluctantly, to take just such statements for information as it may please the Fur Company's officers and agents to give. Supposing, then, what I do not expect, that the Imperial Government will abandon the ground it has taken in the case of Captain Blinn, and admit that we still possess the liberty of holding commerce with the natives north of the line of delimitation, I shall be anxious to have your instructions as to the suggested expediency of calling frankly for an enumeration of the points on the coast at which Russian settlements are alleged to exist, and of inviting the adjustment of some definite rule by which the reality of a settlement, and the extent of its adjacent operation, may at any time be peaceably determined. If, however, the position taken in reference to Captain Blinn's claim be adhered to, these inferior inquiries cannot be made; for that position, as will be remembered, excludes our commerce, except by Russian permission, from the whole coast beyond the degree 54° 40' north.

I should perhaps feel warranted in pursuing measures for this purpose without delay. The request for information as to the regulations to be en-

forced in relation to American vessels, made in my last note to Count Nesselrode, may be esteemed a fair preliminary. But I am anxious to know, before proceeding further, whether the decided manner in which I have treated the claim to exclusive dominion, in the affair of the "Loriot," be approved or not; and whether the right by the laws of nations to trade with the natives on unoccupied parts of the coast be esteemed so certain and so important, that it will be insisted on, even at the hazard of interrupting the amicable relations of the two countries. I wish to shape my progress so as to harmonize in every movement, as nearly as possible, with whichever alternative, inflexibility or concession, the President may esteem the highest and truest policy.

* * * *

I have, &c.,

G. M. DALLAS.

[ENCLOSURE 1 IN MR. DALLAS' NO. 16.]

Count Nesselrode to Mr. Dallas.

[TRANSLATION.]

ST. PETERSBURG, *March 9, 1838.*

The undersigned has had the honor to receive the note that Mr. Dallas, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, was pleased to address him on the 16th (28th) of December, relative to the proposition previously brought forward by Mr. Wilkins, to renew the fourth article of the convention of April 17, 1824, of which the effect had been limited to a term of ten years, and which had, consequently, expired in 1834.

The desire not to decide a question of this importance without a thorough knowledge of the subject, did not permit the Imperial Government to give an opinion in relation to it until detailed information had been collected, as well in regard to the wants of the Russian establishments in America as to the influence that the state of things secured by the fourth article had exercised there. In setting forth this consideration to Mr. Wilkins, the undersigned intimated, in his note of the 28th of November, 1835, that he would give timely notice to the legation of the United States, of the determinations adopted on this subject by the Russian Government.

The information then expected has since reached the undersigned, and it appears that the execution of the temporary provisions contained in the fourth article had not been unattended with serious inconveniences, and that it has been really injurious to the prosperity of the Russian establishments on the northwest coast. The greater part of the foreign vessels which resort to this coast, in virtue of the said stipulations, have only made use of the right of trading with the natives, in order to sell them spirituous liquors, fire-arms, and gunpowder. According to the tenor of the fifth article, these articles were expressly excluded from the trade; but experience has proven that this exclusion, and also the legislative measures by which the Government of the United States sought to carry it into effect, were illusory; since, by the same article, the contracting parties had deprived themselves of all means of controlling the vessels which should visit these latitudes, so that entire cargoes of

rum, of fire-arms, and ammunition, have been carried, without hindrance, into the Russian possessions, and sold to the natives, thus necessarily endangering the germs of order and civilization which the agents of the Russian American Company have already succeeded in introducing among these tribes.

It is, moreover, to be observed, that the articles comprised in this fraudulent trade were expressly those of which the sale there offered most advantages, because the Russian American Company having once for all excluded them from its own traffic with the natives, the latter could only procure them on board foreign vessels.

This state of things could not fail to occasion complaints and remonstrances, which, the Imperial Government being ever anxious for the preservation of its relations with the United States, would alone, from that time, be an adequate motive to induce it to desire that the stipulations of the fourth article should not be renewed. But another consideration, not less decisive, here presents itself: this is the obligation under which the Imperial Government is placed to protect the commerce and navigation of the Russian colonies, and to secure to them, henceforth, the peaceable enjoyment of the advantages which, by virtue of their privileges, they are destined to gather from the improvement (*exploitation*) of the fisheries as well as from the trade with the natives.

These considerations, taken together, render it impossible for the Imperial Government to accede to the proposition which has been made to it to renew the stipulations of the fourth article. The regret experienced by it on the occasion is, however, diminished by the conviction that the United States would not themselves derive any especial advantage from the longer continuance of these stipulations; since, according to a statement of the navigation in these places, even whilst the fourth article was yet in force, there were never more than four American vessels arrived in the course of a whole year, and that even this number, hardly to be taken into account in the flourishing state of the mercantile marine of the Union, was diminishing in proportion as enterprises on the northwest coast offered fewer chances of success. It appears evident from this, that the renewal of the fourth article could hardly contribute to extend, in a reciprocally useful manner, the commercial relations between Russia and the United States of America; or, by consequence, answer the constant solicitude of the Imperial Government, to cement more and more, and in a mutual interest, the friendly connections which it is always happy to cultivate with the Government of the Union.

The undersigned has the honor, &c.,

NESSELRODE.

No. 52.

Mr. Dallas to Mr. Forsyth.

[No. 17.]

LEGATION OF THE UNITED STATES,

St. PETERSBURG, May 13, 1838.

SIR:

On the 9th instant, the communication of which I annex a copy, was received from Count Nesselrode, in reply to my request, under date of the 26th of March last, to be furnished with information as to the measures adopted, or proposed to be adopted, by this Government, respecting the admission of American vessels into the Russian establishments on the northwest coast.

It will be perceived that the substance of Count Nesselrode's note is distinct and definitive; and that the single and simple measure adopted in relation to our vessels, is their absolute exclusion from what are deemed the Russian possessions. The published order of Governor Wrangel, to which Baron Krudener, in 1835, called your attention, is confirmed unqualifiedly in principle and practice; and the cabinet at Washington is invited to repeat the warning heretofore given by it to the citizens of the United States not to contravene that prohibitory notice, so that they may avoid exposing themselves to the consequences of misunderstanding or collision.

Although my request for information was expressly limited to Russian establishments, and Count Nesselrode's reply to it may not strictly be extended beyond that limit, I cannot help thinking that the prefatory and peculiar reference he has made to the expiration of the fourth article of the convention is meant as a reiteration of the position assumed in the case of the "Loriot," Captain Blinn, to wit: that since April, 1834, our right to frequent the interior seas, gulfs, harbors, and creeks north of 54° 40' north latitude, whether actually occupied or not has ceased. The consistent brevity, indeed, with which the effect of the ten years limitation is uniformly invoked, satisfies me that it is esteemed a "*point d'appui*," in relation to our rights and pretensions on the northwest coast, too conclusive to be omitted or argued. My letter, in answer to the first assumption of that position, dated the 17th of March, 1838, and forwarded to you with despatch No. 15, has not been noticed.

* * * * *

Very respectfully, &c.,

G. M. DALLAS.

[ENCLOSURE IN MR. DALLAS' NO. 17.]

Count Nesselrode to Mr. Dallas.

[TRANSLATION.]

ST. PETERSBURG, April 27, 1838.

Mr. Dallas, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has been pleased in his note of the 14th (26th) of March, to express a desire to know what measures have been adopted in consequence of the expiration of the 4th article of the convention of 1824, respecting the admission of American vessels into the harbors, bays, and rivers of the Russian establishments on the northwest coast. This request is made on account of the intention on the part of the cabinet at Washington, to adopt similar regulations, and such as may tend to prevent any injury to the relations now so fortunately existing between the two countries.

The undersigned, hastening to reply to an overture, accompanied by an assurance so satisfactory for the Imperial Government, makes it his duty to observe to Mr. Dallas, that, as the 4th article of the convention of the 5th (17th) of April, 1824, has only granted for ten years to the vessels of the two powers, or those belonging to their citizens or subjects, respectively, the right of frequenting reciprocally, the interior seas, gulfs, harbors, and creeks on the coast mentioned in the 3d article of the same convention, for the purpose of fishing and trading with the natives of the country; and

as this term of ten years expired in the month of April, 1834, the authorities of the Russian establishments on the said coast, are required to see that American vessels no longer frequent the interior seas, gulfs, harbors, and creeks, situated north of the latitude of 54 degrees 40 minutes north, as Russian vessels are, in like manner, forbidden to visit places of the same sort south of that parallel; and to maintain this prohibition, it is the duty of the said authorities to adopt the necessary measures, with the view of keeping up relations of harmony between the two Governments.

The Governor of the Russian colonies on the northwest coast, having made upon this subject a publication which has been submitted to the knowledge of the Government of the United States, and the Emperor's Minister at Washington having immediately afterwards invited that Government to make known to the citizens of the United States the new order of things consequent upon the expiration of the fourth article, the undersigned flatters himself with the belief that the cabinet at Washington, in executing its announced resolution to adopt on its part, similar measures, will think proper likewise to repeat its warning to the citizens of the United States, not to contravene the prohibition in question, and thus to avoid exposing themselves to the consequences of a misunderstanding or collision, which the Imperial Government would be the first to deplore.

On its part, the Imperial Government will not cease to recommend to its authorities on the northwest coast, the necessary precautions, so that, while maintaining the rights acquired by Russia at the expiration of the fourth article, they should not lose sight of the respect due to the bonds of amity which unite the two Governments, and which the Imperial Cabinet will always desire to strengthen and render more close for the mutual interests of their respective citizens and subjects.

The undersigned seizes, &c.,

NESSELRODE.

NOTE.—It is to be observed that by the convention of 1843 between Great Britain and Russia, the provisions of the convention of 1825 between the same powers, which, so far as regards the rights of navigation, fishing and trading with the natives on the northwest coast of America, is identical with that between the United States and Russia of 1824, were revived and continued for an indefinite period. They were, it is understood, still in force when Alaska was ceded to the United States in 1867. Now, by the eleventh article of the treaty of December ⁸/₁₈, 1832, between Russia and the United States, which is still in force, the benefit of these provisions was extended to the citizens of the United States. That this would be the case was admitted by Count Nesselrode in his conversation with Mr. Wilkins reported in the latter's No. 16, of Dec. 11, 1835; *supra*, p. 75. And this fact explains the entire absence of controversy on the subject between Russia and the United States from 1843 to 1867.

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PART III.

SEA OF OKHOTSK.

This sea is a part of the waters to which the ukase of 1821 applied, and which Mr. Poletica, in his subsequent correspondence with Mr. Adams, prior to the Treaty of 1824, said His Imperial Majesty, the Emperor of all the Russias, might have claimed as a close sea had he chosen to do so. As has been seen, all question as to the right of citizens of the United States, as well as of the subjects of Great Britain, to navigate and fish in those waters was given up by Russia once for all in the Treaty of 1824 with the United States, and of 1825 with Great Britain.

The following correspondence between Russia and the United States in the years 1867 and 1868 contains an explicit disavowal by Russia of any claim to interfere with the fishing operations of citizens of the United States in the Sea of Okhotsk.

No. 53.

Mr. Seward to Mr. Clay.

[No. 273.]

DEPARTMENT OF STATE,
WASHINGTON, *December 23, 1867.*

SIR:

Much anxiety has been created in the United States by the report that Captain Mellen, master of the ship *Europa*, a United States whaling vessel, has written to the owners of the vessel that a party of Russians have established a fishery on the shore near Okhotsk City, in the Sea of Okhotsk; that a Russian armed steamer has been there and ordered the ships all away; that the captain of the steamer said he was authorized to drive United States whalers away from the place; and, finally, that the captain of the steamer has fired upon the ship's boat of the bark *Endeavor*, of New Bedford.

Mr. De Stoeckl, to whom I have applied, has no information on the subject. The statements received at this Department are altogether vague and without authentication. I will thank you to ascertain from the prime minister for foreign affairs what foundation, if any, there is for the statements, and what, precisely, are the instructions of the imperial government appertaining to the fisheries in the Sea of Okhotsk.

I am, sir, &c.,

WILLIAM H. SEWARD.

No. 54. •

Mr. Clay to Mr. Seward.

[No. 175.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, *January 18, 1868.*

SIR:

I now transmit to you a copy of my note to Prince Gortchacow in reference to the Okhotsk affair, and also a copy of his reply, through the adjunct of the minister of foreign affairs to His Imperial Majesty, M. de Westmann.

I am, sir, your obedient servant,

C. M. CLAY.

[ENCLOSURE 1 IN MR. CLAY'S NO. 175.]

Mr. Clay to Prince Gortchacow.

[NOTE 149.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, Russia, *January 15, 1868, A. S.*

The undersigned has the honor to represent to his excellency Prince Gortchacow, chancellor, etc., to His Imperial Majesty, etc., that he is instructed by the Washington Government to inform the imperial government that much anxiety has been created in the United States by a report from Captain Mellen, of the American whaling ship *Europa*, to its owners, that a party of Russians had established a fishery near the city of Okhotsk, in the sea of that name, and that a Russian armed steamer had ordered the ships away in the name of the Russian government, claiming to be so authorized; and that the captain of said steamer had fired upon the boats of the bark *Endeavor*, of New Bedford.

Mr. de Stoeckl has been able to give no information upon the subject. The Secretary of State adds that the statements received at the Department are altogether vague and without authentication, and he therefore requests of the undersigned to ascertain from his excellency Prince Gortchacow what are precisely the instructions, if any, given by the Russian government in regard to the fisheries in the Sea of Okhotsk.

The American minister has the honor, &c.,

C. M. CLAY.

[ENCLOSURE II IN MR. CLAY'S NO. 175.]

Mr. Westmann to Mr. Clay.

[TRANSLATION.]

The chancellor of the empire, who is sick, as you know, my dear general, has charged me to answer your note of the 13th of January, instant. Having asked (*demandé*) of the minister of marine information upon the affair named in your note, Admiral Krabbé has just informed us that the minister of marine has not, up to the present time, any knowledge of the conflict (*conflit*) which has taken place in the Sea of Okhotsk between the Russian and American ships.

Accept, &c.,

WESTMANN.

JANUARY 5, 1868.

No. 55.

Mr. Seward to Mr. Clay.

[No. 278.]

DEPARTMENT OF STATE,

WASHINGTON, February 24, 1868.

SIR:

I recur on this occasion to my despatch No. 273, which related to alleged hostile demonstrations of a Russian armed vessel against a United States whaling vessel in the Sea of Okhotsk. That communication was grounded upon mere rumor, which furnished no details and was supported by no evidence. Prince Gortchacow, in his reply, answered substantially that the Russian Government had no information of the alleged conflict, and had given no orders or directions under which any hostile demonstrations could have been made.

At last I have received details, which, however, are very limited, and testimony which is very incomplete. This subsequent information is contained in a dispatch of Morgan L. Smith, Esq., United States consul at Honolulu, which is accompanied by a deposition made by Manuel Enos, master of the American bark Java.* In brief, Mr. Enos' statement presents the following facts, namely: that on the 27th of July, while he was cruising for whales in Shantar Bay, and standing towards Silas Richard's bluff, a Russian armed vessel came towards him, apparently under full steam, hoisted its flag, and threw open its ports. An officer from that Russian vessel went on board of the Java and ordered Captain Enos immediately on board the Russian steamer. The Russian commander demanded to know the business of the United States vessel there. Captain Enos answered that his business was whaling, whereupon the Russian commander ordered Captain Enos to leave the bay within 24 hours, under a threat of taking Captain Enos with his vessel to Nicolawasky, or blowing him out of the water, as the Russian captain should think proper. Captain Enos replied that he had whaled in those bays for the last 17 years, and had never heard of any one being

* For these papers see Dip. Corr., 1868, p. 468.

driven out, or of any purpose of excluding whalers. Captain Enos thereupon immediately left Shantar Bay. Captain Enos further says that he afterwards learned from some of the crew of the American bark Endeavor, that they, knowing nothing of the trouble, went into the same place, Shantar Bay, a few days afterwards, and that their boats were fired into by the same vessel before mentioned, and that they were commanded to leave the bays by threats to the same effect with those which had been made against Captain Enos. The consul transmitting this statement says that he has been unable to procure the name of either the Russian vessel or her commander; that he is informed by the master of the English bark Cobang, that some Finns, subjects of the Czar, have a whaling station there, keeping two schooners in the bay, and having their trying works on shore. If we were at liberty to assume these special statements to be true, and if we were not assured by the Russian government that the transactions complained of occurred not only without its knowledge, but without any authority, we should in that case have reason for profound concern.

As the matter stands, with the possibility that similar armed hostile demonstrations may be made on the same quarter, there is reason to apprehend that discontent will arise and perhaps conflict may occur between citizens of the United States and the subjects of Russia in the Sea of Okhotsk. Nothing could be more inconvenient than such difficulties at the present moment, as I am well assured nothing could be more sincerely deprecated by the Russian government.

You will give a copy of this communication to Prince Gortchacow, and of its accompaniments, Consul Smith's despatch and Captain Enos' deposition, and invite Prince Gortchacow to give his attention to the same at his reasonable convenience.

I am, sir, &c.,

WILLIAM H. SEWARD.

No. 56.

Mr. Clay to Mr. Seward.

[No. 183.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, *March 20, 1868.*

SIR:

To-day I received from Prince Gortchacow a note of this date, in reference to the affairs of the Java, in the Sea of Okhotsk. I enclose you a translation of the same from the French.

I am, sir, &c.,

C. M. CLAY.

[ENCLOSURE IN MR. CLAY'S No. 183.]

Prince Gortchacow to Mr. Clay.

[TRANSLATION.]

By his note of March 4-16 instant, Mr. Clay, envoy extraordinary and minister plenipotentiary of the United States of America, has transmitted to the imperial ministry a copy of a dispatch from Mr. Seward, accompanied with documents relative to the complaint of Señor Enos, captain of an American whaler, upon the subject of measures of rigor ("*de mesures de rigueur*") of which he had been the object on the part of a vessel of the imperial marine in the waters of the Sea of Okhotsk. In response to that communication, the undersigned, chancellor of the empire, has the honor to inform Mr. Clay that the imperial ministry has not received, up to this time, the information which, from the reception of his first note of the 18th of January, it hastened to demand of the competent authorities relative to that affair.

As soon as the reports of these authorities shall reach him, the undersigned will lose no time (*s'empresera*) in communicating them to Mr. Clay.

He seizes, &c.,

GORTCHACOW.

ST. PETERSBURG, *March 8, 1868.*

No. 57.

Mr. Clay to Mr. Seward.

[No. 199.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, *August 14, 1868.*

SIR:

I herein inclose you a translation of the note, from the French, of Mr. de Westmann, acting minister of foreign affairs, etc., and a copy of my response, in reference to the affair in the Sea of Okhotsk.

I am sir, &c.,

C. M. CLAY.

[ENCLOSURE I IN MR. CLAY'S No. 199.]

Mr. Westmann to Mr. Clay.

[TRANSLATION.]

The undersigned, acting minister of foreign affairs, in referring to the note which General Clay, envoy extraordinary and minister plenipotentiary of the United States of America, was pleased to address to the chancellor of the empire, dated the 4-16th of March ultimo, has the honor to inform him that he has been put in possession of advices which, according to the desire of the federal government, the imperial cabinet hastened to ask of the minister of marine concerning the incident occurring in the Sea of Okhotsk, between an American whaler and a ship of the imperial navy. These are the circumstances: The schooner Aleout, under the command of Lieutenant Etoline, had been sent in commission from Nikolaievsk to Ondrk. The abundance of floating ice having forced him to enter into the gulf of Toumoursh, he there met, the 14th of July, at about 20 miles to the south of the straits of Chautarsk, near the eastern coast, the American whaler Java, occupied in rendering the oil of a captured whale. Considering that foreign whalers are forbidden by the laws in force to fish in the Russian gulfs and bays at a distance less than three miles from the shore, where the right of fishing is

exclusively reserved to Russian subjects, Lieutenant Etoline warned (*invita*) the captain of the Java to "bear off" from the gulf of Toumoursh, which he at once did. The same day, the Aleout made for the bay of Mawgon, where arrived, on the next day, the American whale-schooner Caroline Foot, whose captain, accompanied by the captain of the Java, called on Lieutenant Etoline, and declared that he had no right to prevent them from fishing for whales wherever they liked. Lieutenant Etoline replied that there were in that respect established rules (*règles*), and if they insisted, absolutely, upon breaking them, that he would be compelled to prevent them. The captain of the schooner Caroline Foot pretending (*ayant prétendu*) that he had entered into the bay of Toumoursh in consequence of "deviations from his course," Lieutenant Etoline offered, at once, all assistance in his power; and, upon request, delivered him seven poods of biscuit from the stores of the Aleout. After which the two ships again went to sea. The 19th of July, that is, four days afterwards, the schooner Aleout met a whale, upon which the commander caused a trial fire to be made. At the same moment was seen, at about 16 miles' distance, a sail, name unknown, and nearer, three "chaloupes," the nearest of which was at least three miles in advance in the direction of the cannon fire. In the evening all these ships had disappeared. That incident is registered in the books of the Aleout in the following terms: "The 19th of July, at nine in the evening, at anchor in the bay of Mawgons, fired a cannon shot for practice at a whale afloat." From these facts General Clay will be convinced that the incident alluded to has been exaggerated, and even perverted, (*de nature*;) much in order to be represented as a cause of grievance against the commander of the Aleout on the part of the American whalers. In consequence of the conversation which had occurred between them, of the pretensions of the captain of the Java to fish wherever he pleased, and the necessity in which Lieutenant Etoline was placed to remind him of the laws which related to the right of fishing in the territorial waters of a foreign state, it is possible that the commander of the Java had really taken for a menace directed against him the fire of the experimental shot from the Aleout. But it is incontestable that the commander of the Aleout was acting in his right when he reminded the Americans of the laws in vigor, and his obligations to cause them to respect them. He certainly has not transcended the limits of his rights in firing, four days afterwards, a trial shot upon a floating whale in Russian waters.

He had no intention by that of giving the American whalers a warning, (*avertissement*), useless because they were out of difficulty, and since the distance which separated the Aleout from the ships and the "chaloupes" in view at the time excluded all such intentions. Lieutenant Etoline had taken in their behalf proceedings conformable to the good relations between the two countries, since he had offered them his assistance in repairing their deviations from their course, and in providing them with provisions. Finally, the commander of the Aleout has not thought it necessary to inform the authorities of that incident, because it appeared to him of no importance, (*insignifiant*), and because on his part he was conscious of not having transcended his rights, nor of having been wanting in his duty.

The undersigned flatters himself with the hope that the federal government, informed of these details, will consider the affair as settled, (*l'incident comme vidé*).

He seizes at the same time this occasion to renew, &c.,

WESTMANN.

ST. PETERSBURG, July 31, 1868.

[ENCLOSURE 2 IN MR. CLAY'S NO. 192.]

Mr. Clay to Mr. Westmann.

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, August 2-14, 1868.

The undersigned has the honor to acknowledge the receipt of note No. 2530 of his excellency, M. de Westmann, acting minister of foreign affairs, &c., dated July 31, ultimo, 1868, O. S., in reference to the affair in the Sea of Okhotsk, which he will hasten to lay before his government.

Whilst the United States are justly jealous of all their maritime rights, the American minister believes that his government, having had many signal proofs of the friendly sentiments of His Imperial Majesty's navy, will be slow to believe that they or any portion of His Imperial Majesty's subjects will desiginedly invade them.

The minister of the United States begs, &c.,

C. M. CLAY.

No. 58.

Mr. Seward to Mr. Clay.

[No. 295.]

DEPARTMENT OF STATE,

WASHINGTON, August 31, 1868.

SIR:

I have the honor to acknowledge the receipt of your despatch of the 14th of August, No. 199, which is accompanied by a note which was addressed to you on the 31st of July last, by M. de Westmann, acting minister of foreign affairs, and which contains the long-looked-for explanation of the collision which occurred in the Sea of Okhotsk between the commandant of a Russian ship of war and two United States whaling vessels, and which was made a subject of inquiry by this government. In substance the explanation is, that Lieutenant Etoline, commanding the Russian war schooner Aleout, on the 14th of July, 1867, was entering the gulf of Toumoursh, and was about 20 miles to the north of the straits of Chautarsk, near the eastern coast, when he discovered the United States whaling ship Java occupied there in rendering the oil of a captured whale. The lieutenant had no special orders or instructions or charge from his government concerning these United States whalers, or indeed any whalers, in Russian waters far from or near the coast of Russia. Moved, however, by the consideration that Russia enjoys the undeniable right of admiralty in all waters lying within three miles of her territory, Lieutenant Etoline warned the captain of the Java to bear off from the gulf of Toumoursh. The captain of the Java immediately moved away, in prompt compliance with this warning. On the next day the Aleout was in the bay of Mawgon. The captain of the United States whaling schooner Caroline Foot accompanied the captain of the Java, who called upon Lieutenant Etoline. Then Lieutenant Etoline represents that the captain of the Java on that occasion remarked that Lieutenant Etoline had no right to prevent their fishing for whales wherever they liked. In reply to this general assertion Lieutenant Etoline said that there are regulations, and that if the captains of the whalers should insist on breaking those regulations he would be obliged to prevent them. Here the conversation ended. Thus far nothing was done by either of the captains of the whaling vessels which could be considered as an invasion or violation of Russian jurisdiction. The conversation was a desultory one, having no practical bearing upon any proceeding ever before or after attempted, or even contemplated, by either party.

The parties, indeed, have mutually expressed themselves with some indiscretion. Lieutenant Etoline does not allege that the whaling ship Java was within three miles of the shore when he warned her to bear off. On the other hand, the captain of the Java spoke unwarrantably when by implication he denied that the Russian authorities have a right to prevent foreign vessels from fishing for whales within three marine miles of their own shore. Lieutenant Etoline then offered assistance and furnished provision to the schooner Caroline Foot, which vessel was then in distress; this proceeding was commendable, and it is appreciated by this government. Here this merely accidental intercourse between the commanders of the Aleout and of the United States whalers Java and Caroline Foot practically ended, and certainly without having offered any serious ground of complaint to the government of either party against the other. The transaction, nevertheless, had a sequel, and this sequel resulted in a misunderstanding on the part of the captains of the whalers. Four days after the vessels had parted in the bay of Mawgon, the Aleout met a whale afloat. The commander ordered a cannon to be fired at the whale by way of a trial shot. At the same moment there appeared, at about 16 miles' distance, a sail, name unknown, and nearer, three chaloupes, the nearest of which was more than three miles distant from the Aleout, but all in the direction of the cannon shot. In the evening all of these vessels had disappeared. It is to be presumed that the Java was one of those vessels. The captain of the Java, hearing the report of this trial fire of the Aleout, seemed to have referred it to the conversation he had had four days before with Lieutenant Etoline, and so he has, not unnaturally, represented the transaction to this government as one in which the Russian officer had fired upon his whaling vessel with an intention to drive him from the Sea of Okhotsk.

Lieutenant Etoline disavows and denies the construction thus put upon his proceeding in the transaction, and the denial is rendered entirely credible by the fact that he set down only the fact of his firing at the whale in his log-book, and of the vessels seen in the distance; nor did he think his proceeding of such importance or interest as to report it to his government, and he was surprised when informed of the construction which the captain of the Java had put upon it.

In any case, the disavowal by the Russian government of any hostile or unfriendly direction, instruction, or sanction of any proceeding or intention unfriendly to the United States, is quite abundant for the satisfaction of this government.

You will give a copy of this communication to Mr. de Westmann.

I am, sir, &c.,

WILLIAM H. SEWARD.

PART IV.

The following correspondence has recently taken place in relation to that part of the Pacific Ocean, adjacent to the Russian possessions.

No. 59.

Mr. Frelinghuysen to Mr. Hoffman.

[No. 120.]

DEPARTMENT OF STATE,
WASHINGTON, *March 7, 1882.*

SIR:

I inclose copies of letters from the Treasury, and a copy of a letter from Messrs. Lynde & Hough, of San Francisco, to the Secretary of the Treasury, touching the Pacific coast fisheries. This latter communication states that according to late news "foreign vessels must receive an order from the governor of Siberia, besides paying duties of \$10 per ton on all fish caught in Russian waters," which they say would be ruinous to their business. In view of the above, I have to ask that you will make immediate inquiry on this subject, and report the facts. If a brief telegram will furnish information of value to our fishermen in this regard, you can send one.

I am, &c.,

FRED'K T. FRELINGHUYSEN.

[ENCLOSURE 1 IN NO. 120.]

Mr. Folger to Mr. Frelinghuysen.

TREASURY DEPARTMENT,
February 2, 1882.

SIR:

I have the honor to acknowledge the receipt of your letter of the 3d ultimo, transmitting a copy of a dispatch of the 21st of November last from the minister of the United States at Tokyo, Japan, with its inclosure, relative to the notice given by the Russian consul at Yokohama in reference to the licensing of foreign vessels trading, hunting, or fishing on the Asiatic coast of Russia.

I have to inform you that this department has issued circular instructions to collectors of customs, and others, at every port throughout the country, to which the Russian consul's notice is subjoined, dated January 30, 1882, and I inclose herewith six copies of the circular.

Very respectfully,

CHAS. J. FOLGER.

[CIRCULAR.]

Permit required for hunting, trading, and fishing on Russian coasts of the Okhotsk and Behring Seas.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January 30, 1882.*

TO COLLECTORS OF CUSTOMS AND OTHERS:

The subjoined notice by the Russian consul at Yokohama, that American vessels are not allowed, without a special permit or license from the governor-general of Eastern Siberia, "to carry on hunting, trading, fishing, &c., on the Russian coasts, or islands in the Okhotsk or Behring Seas, or on the northeastern coast of Asia, or within the sea-boundary line," is published by the department for the information of American shipmasters interested.

It will be observed that the Russian order took effect on January 1, 1882.

CHAS. J. FOLGER,
Secretary.

NOTICE.

At the request of the local authorities of Behring and other islands, the undersigned hereby notifies that the Russian Imperial Government publishes, for general knowledge, the following:

I. Without a special permit or license from the governor-general of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, &c., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the northeastern coast of Asia, or within their sea-boundary line.

II. For such permits or licenses, foreign vessels should apply to Vladivostok, exclusively.

III. In the port of Petropaulovsk, though being the only port of entry in Kamtschatka, such permits or licenses shall not be issued.

IV. No permits or licenses whatever shall be issued for hunting, fishing, or trading at or on the Commodore and Robben Islands.

V. Foreign vessels found trading, fishing, hunting, &c., in Russian waters, without a license or permit from the governor-general, and also those possessing a license or permit who may infringe the existing by-laws on hunting, shall be confiscated, both vessels and cargoes, for the benefit of the government. This enactment shall be enforced henceforth, commencing with A. D. 1882.

VI. The enforcement of the above will be intrusted to Russian men-of-war, and also to Russian merchant-vessels, which, for that purpose, will carry military detachments and be provided with proper instructions.

A. PELIKAN,
H. I. R. M. Consul.

YOKOHAMA, *November 15, 1881.*

[ENCLOSURE 2 IN NO. 120.]

Mr. Folger to Mr. Frelinghuysen.

TREASURY DEPARTMENT,
February 24, 1882.

SIR:

I have the honor to enclose herewith, for such action in the case as you may deem proper, a letter from Messrs. Lynde & Hough, of San Francisco, Cal., stating that they are extensively engaged in the Pacific coast cod fisheries, and that they will fit out their vessels, to sail about the 1st of May next, in that enterprise, in which they have never been molested; but they now learn that foreign vessels must receive an order from the governor of Siberia, besides pay a duty of \$10 per ton on all fish caught in Russian waters, which, if sustained, will be ruinous.

Very respectfully,

CHAS. J. FOLGER,
Secretary.

[ENCLOSURE 3 IN NO. 130.]

*Messrs. Lynde & Hough to Mr. Folger.*SAN FRANCISCO, *February 15, 1882.*

SIR:

You will please pardon us for this seeming intrusion, but the matter we now seek your aid and kind assistance is of great import to us.

We now are and have been extensively engaged in the Pacific coast cod fisheries, and, in fact, are among the very few fifteen years ago who started in a small way, believing with energy and fair dealing we could work up an enterprise that would be a benefit to the coast. Our ideas were correct. We have been yearly sending vessels to the coast of Kamtschatka (Sea of Okhotsk) for fish. We never have been molested in Russian waters from catching codfish or procuring bait, which are small salmon in the rivers, or filling fresh water for use of ship, but it appears now there is a law which has never been enforced against foreign the same we have recently noted, and which we have been apprised of, and the substance is that foreign vessels must receive an order from the governor of Siberia, besides must pay a duty of \$10 per ton on all fish caught in Russian waters. This decree, if sustained, is ruinous to one of the best and rising industries of the coast, and as we fit our vessels to sail about 1st of May, leaves us but little chance to arrange matters this season save with your kind assistance in the matter. Our business is fishing entirely. We use no trade with natives, having nothing to do with the taking or purchasing of furs. At this time we are placed in a very bad predicament. Trusting that you can relieve us from this embarrassment, and receive an early reply on the subject,

We are, &c.,

LYNDE & HOUGH.

P. S.—Our vessels fish from ten to twenty-five miles from shore.

No. 60.

Mr. Hoffman to Mr. Frelinghuysen.

[No. 207.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, *March 14, 1882.* (Received April 3.)

SIR:

I have the honor to acknowledge the receipt of a circular of the Treasury Department of July 30 last, upon the subject of fishing, etc., in the Behring Sea and in the Sea of Okhotsk.

I am able to give the Department some little information upon this subject, derived nearly four years ago from Mr. Charles H. Smith, for many years a resident of Vladivostok, and at one time our consul or vice-consul at that port.

A glance at the map will show that the Kurile Islands are dotted across the entrance to the Sea of Okhotsk the entire distance from Japan on the south to the southernmost cape of Kamtschatka on the north.

In the time when Russia owned the whole of these islands, her representatives in Siberia claimed that the Sea of Okhotsk was a *mare clausum*, for that Russian jurisdiction extended from island to island and over two marine leagues of intermediate sea from Japan to Kamtschatka.

But about five years ago Russia ceded the southern group of these islands to Japan, in return for the half of the island of Saghalin, which belonged to that power.

As soon as this was done it became impossible for the Siberian authorities to maintain their claim. My informant was not aware that this claim had ever been seriously made at St. Petersburg.

The best whaling grounds are found in the bays and inlets of the Sea of Okhotsk. Into these the Russian Government does not permit foreign whalers to enter, upon the ground that the entrance to them, from headland to headland, is less than two marine leagues wide. But while they permit no foreign whalers to penetrate into these bays, they avail themselves of their wealth very little. The whole privilege of whaling in those waters is a monopoly owned by an unimportant company, which employs two or three sailing schooners only, the trying and other laborious work being done at their stations on shore.

Referring to my No. 44, of June, 1878, I have the honor to add that Baron Stoeckl told me in conversation last winter that we failed to make a fishing treaty with Russia in 1868 principally on account of the vested interests of this company.

Mr. C. H. Smith now resides at Great Falls, N. H., and would be glad, I am sure, to put his information at the service of the Department.

I am, sir, &c.,

WICKHAM HOFFMAN.

No. 61.

Mr. Hoffman to Mr. Frelinghuysen.

[No. 211.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, *March 27, 1882.* (Received April 13.)

SIR:

I have the honor to acknowledge the receipt of your No. 129, with its inclosures, in reference to our Pacific ocean fisheries. Your dispatch reached me yesterday, and to-day I have written to Mr. de Giers upon the subject, and I propose to call upon him upon his first reception day. In the meantime, and until further information, I do not see that any new orders necessarily affecting our fishermen have been issued by the Russian Government. Messrs. Lynde & Hough have apparently given insufficient attention to the words "Russian waters." These waters are defined in the notice published by the imperial vice-consulate at Yokohama as follows:

Fishing, etc., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the northeastern coast of Asia, or within their sea boundary line.

If I recollect correctly the information given me by Mr. Smith upon this subject, referred to in my No. 44, of June 1878, and in my No. 207,

of this month, the cod banks lie in the open Sea of Okhotsk, many marine leagues off the southwestern coast of Kamschatka. I observe that Messrs. Lynde & Hough state that their vessels fish from ten to twenty-five miles from the shore. At that distance in an open sea they cannot be said "to fish upon the coast."

I do not think that Russia claims that the Sea of Okhotsk is a *mare clausum*, over which she has exclusive jurisdiction. If she does, her claim is not a tenable one since the cession of part of the group of the Kurile Islands to Japan, if it ever were tenable at any time.

I may add that, according to the information given me four years ago, Russia opposes no objections to foreign fishermen landing in desert places on the coast of Kamschatka, far from the few villages which are found on that coast, for the purposes of catching bait and procuring fresh water; but she does object to all communication between trading and fishing vessels and the inhabitants, alleging that these vessels sell them whisky, upon which they get drunk and neglect their fishing, their only means of livelihood, and then, with their wives and children, die of starvation the ensuing winter.

I am, sir, &c.,

WICKHAM HOFFMAN.

No. 62.

Mr. Hoffman to Mr. Frelinghuysen.

[No. 228.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, May 22, 1882. (Received June 6.)

SIR :

Referring to your No. 120 and to my Nos. 211 and 215, I have the honor to forward to you herewith a translation of a note recently received from Mr. de Giers upon the subject of hunting, fishing, and trading in the Pacific waters.

I do not see that there is anything in the regulations referred to that affects our whalers, nor our cod-fisheries either, except that when they go ashore to catch small fish for bait in the streams, they expose themselves to interruption from the Russian authorities, who, finding them in territorial waters, may accuse them of having taken their fish therein.

I will endeavor to procure and forward you a translation of the articles of the code referred to by Mr. de Giers, that you may have the whole matter before you. This cannot be done, however, under several days.

I am, sir, &c.,

WICKHAM HOFFMAN.

[ENCLOSURE IN No. 228. — TRANSLATION.]

Mr. de Giers to Mr. Hoffman.

MINISTRY OF FOREIGN AFFAIRS, ASIATIC DEPARTMENT,

May 8-20, 1882.

SIR :

Referring to the exchange of communications which has taken place between us on the subject of a notice published by our consul at Yokohama relative to fishing, hunting, and to trade in the Russian waters of the Pacific, and in reply to the note which you addressed to me, dated March 15-27, I am now in a position to give you the following information :

A notice of the tenor of that annexed to your note of the 15th March was, in fact, published by our consul at Yokohama, and our consul-general at San Francisco is also authorized to publish it.

This measure refers only to prohibited industries and to the trade in contraband ; the restrictions which it establishes extend strictly to the territorial waters of Russia only. It was required by the numerous abuses proved in late years, and which fell with all their weight on the population of our seashore and of our islands, whose only means of support is by fishing and hunting. These abuses inflicted also a marked injury on the interests of the company to which the imperial government had conceded the monopoly of fishing and hunting ("exportation"), in islands called the "Commodore" and the "Seals."

Beyond this new regulation, of which the essential point is the obligation imposed upon captains of vessels who desire to fish and to hunt in the Russian waters of the Pacific to provide themselves at Vladivostok with the permission or license of the governor-general of Oriental Siberia, the right of fishing, hunting, and of trade by foreigners in our territorial waters is regulated by article 560 and those following, of vol. 12, part 2, of the Code of Laws

Informing you of the preceding, I have the honor, &c.,

GIERS.

No. 63.

Mr. Hoffman to Mr. Frelinghuysen.

[No. 231.]

LEGATION OF THE UNITED STATES,

ST. PETERSBURG, June 14, 1882. (Received July 3.)

SIR :

Referring to my No. 228, I have the honor to forward to you herewith a translation of a note and inclosure received yesterday from Mr. de Giers upon the subject of fishing and hunting in the Russian Pacific waters. As far as I am at present informed, the department has now before it the whole legislation of Russia upon the subject.

I am, sir, &c.,

WICKHAM HOFFMAN.

[ENCLOSURE IN No. 231. — TRANSLATION.]

Mr. de Giers to Mr. Hoffman.

MINISTRY OF FOREIGN AFFAIRS, ASIATIC DEPARTMENT,

June 1-13, 1882.

SIR :

In consequence of the note which you addressed to me on the 13-25th May, relative to fishing and hunting in our Pacific waters, and in which you expressed the desire to have a translation of the articles of our code which govern the matter, I have the honor to transmit to you herewith a translation of articles 560, etc., of the code, vol. 12, part 2.

Receive, sir, &c.,

GIERS.

[TRANSLATION.]

ART. 560. The maritime waters, even when they wash the shores where there is a permanent population, cannot be the subject of private possession; they are open to the use of one and all.

ART. 561. No exception will be made to this general rule except under the form of special privileges, granted for the right of fishing in certain fixed localities, and during limited periods.

ART. 562. The above regulation regarding the right of fishing and analogous occupations on the seas extends equally to all lakes which do not belong to private properties.

ART. 565. No restriction shall be established as regards the apparatus (engines) employed for fishing and for analogous occupations in the high seas, and it shall be permitted to every one to use for this purpose such apparatus as he shall judge to be best according to the circumstances of the locality.

ART. 571. Ships in quarantine are not permitted to fish; the same prohibition extends in general to all persons in those localities where ships are lying undergoing quarantine.

No. 64.

Mr. Bayard to Mr. Taft.

[No. 13.]

DEPARTMENT OF STATE,

WASHINGTON, *March 25, 1885.*

SIR:

I enclose a copy of a despatch from Kanagawa, Japan, and of the papers accompanying the same, relating to the unwarranted seizure of the schooner "Eliza," the property of a highly respected American citizen doing business at Yokohama, Japan, by the Russian cruiser "Razboinik," in the Anadyr river, on the 21st July last, and its subsequent "confiscation" by the captain of the cruiser, without any court of inquiry.

According to the statement of the owner, the vessel was on a trading voyage and catching walrus. No act obnoxious to Russian law seems to have been committed in the premises; neither was any article carried by the vessel which could have warranted the seizure and confiscation referred to.

The papers have been carefully examined by the law officer of the Department and, in pursuance of his advice, I have to ask that you will present the claim of Mr. F. C. Spooner, the owner of the "Eliza," for the favorable consideration of His Majesty's Government.

"The pecuniary loss to me," says Mr. Spooner, in his sworn statement, "of the vessel and cargo, would amount to ten thousand dollars, and for this sum, together with all other expenses that may appear to have been incurred through this seizure and confiscation, I wish to make claim on the Russian Government."

I am, &c.,

T. F. BAYARD.

[ENCLOSURE IN MR. BAYARD'S NO. 13.]

Mr. Rice to Mr. Bayard.

[No. 879.]

UNITED STATES CONSULATE GENERAL,

KANAGAWA, JAPAN, *February 9, 1885.*

[Received March 16.]

SIR:

Herewith I have the honor to hand you a communication from Mr. Francis C. Spooner, a highly respectable American merchant, for many years resident and doing business at Yokohama, Japan, concerning the seizure by the Russian authorities of the schooner "Eliza," the property of the said Spooner, on the 26th of July, 1884. I also enclose the depositions of Austin Weston, master, and Albert Wixon, mate, of said vessel, giving the details of the schooner's cruise and her seizure.

From these papers it would appear that the schooner was engaged in no illegal commerce and was violating no law or obligation and that the said seizure was an act of piracy.

I also enclose certified copies of the bill of sale of said schooner to Mr. Spooner, certificate of American ownership, certificate of change of name from "Kiwa Elizabeth" to "Eliza," and copy of last clearance of said schooner from this port.

I commend to favorable consideration the claim of the owner for the damages as assessed by him.

I have, &c.,

GEO. E. RICE,

Vice Consul General.

[ENCLOSURE 1 IN MR. RICE'S NO. 879.]

Affidavit of F. C. Spooner.

I, F. C. Spooner, owner of the schooner "Eliza," that left this port on the 21st March last, under protection of the American flag, and was seized by the Russian cruiser "Razboïnik," in the Anadyr river, on the 26th day of July last, do hereby protest against the seizure as illegal and unwarranted, and desire a representation, through the proper authorities, to the Russian Government.

The vessel was simply on a trading voyage, engaged in bartering with the natives and catching walrus, and as such did not come under the notice of the Russian Government which was directed against the capture of seals on Copper, Robbin and Behring's Island.

I hand herewith affidavit of the master, Austin Weston, supported by his chief officer. The vessel's papers were in order and she had been properly cleared from this port. No salt was on board and no preparation made for an attempt to take seals.

The vessel has been confiscated by the Captain of the "Razboïnik" and without any court of enquiry, which high-handed act I believe to be against the Law of Nations.

The pecuniary loss to me of the vessel and cargo would amount to ten thousand dollars, and for this sum, together with all other expenses that may appear to have been incurred through this seizure and confiscation, I wish to make claim on the Russian Government.

F. C. SPOONER.

Sworn to before me this 20th November, 1884.

[SEAL.]

GEO. E. RICE,

U. S. Vice Consul-General, Kanagawa, Japan.

[ENCLOSURE 2 IN MR. RICE'S NO. 279.]

Affidavit of Austin Weston, master of the American schooner "Eliza."

I, Austin Weston, late master of the American schooner "Eliza," being duly sworn, do hereby affirm:

Sailed from Yokohama, March 21st, 1884, with a crew of 14, all told, consisting of myself, two officers, cook, and 10 men before the mast, bound on a hunting and trading voyage to Northeastern Siberia.

My cargo consisted of assorted and general goods such as are requisite in that section to obtain whalebone, ivory and furs.

My vessel was duly cleared from the Yokohama customs, the 21st of March, the day of sailing.

A specified invoice of everything on board was supplied me before leaving. Sailed for Behring's Straits, was in the ice pack 49 days, and reached Cape Chaplin on the 23rd of June, where I traded for bone, ivory, furs and blubber.

Left Chaplin for St. Lawrence bay and East Cape, where I got a good quantity of bone and furs. Returning through the Straits I sailed to the westward, stopping at Cape Acheen, and then into the Gulf of Holy Cross, where I remained 17 days hunting and killing walrus; then to the mouth of the Anadyr River, where I arrived on the 23rd July.

Proceeded up the river a few miles to a village, traded here and continued on. On the 26th, about 2 p. m., was boarded by a boat from the Russian cruiser "Razboinik" and ordered to report on board with my log book and all ship papers.

These consisted of ship's articles, bill of sale, Yokohama clearance and manifest of cargo and stores.

The latter was found and produced a short time after seizure, although mislaid at the time, and no attempt was made to conceal anything.

The vessel was at once declared to be confiscated, and I with a portion of the crew were taken by the "Razboinik" to Petropaulski and landed. The remainder of the crew were kept on board the schooner to work her to Vladivostok. After being 21 days at Petropaulski, I was again taken on board the "Razboinik" and taken to Vladivostok and again set at liberty. The schooner arrived off the harbor the same day and was towed in by the cruiser; was afterwards hauled into dock and everything taken out of her.

Immediately on arrival at Vladivostok, the 5 men who had been detained on board the "Eliza" to work the vessel, were thrown on the hands of the consul, and their expenses there and passage to Yokohama refused.

I deny the statement in the Protocol that the vessel had neither bill of lading or clearance, for she had both.

There was a great search made for salt as the most important article to cause confiscation, but there was none on board.

I sailed from Yokohama with positive instructions from my owners not to attempt any capture of seals and to keep away from the islands frequented by them, knowing the Russian Government had forbidden any depredations. My trading voyage was similar to what has been going on for years without molestation from the Russian Government, and I plead ignorance that the notice issued and referred to in the protocol was intended to apply to anything except the protection of the seal fisheries, and particularly to the Copper, Robbin and Behring Islands.

AUSTIN WESTON.

Sworn to before me this 20th November, 1884.

[SEAL.]

GEO. E. RICE,

U. S. Vice Consul-General, Kanagawa, Japan.

Albert Wixon, being duly sworn, says that the foregoing is a true and correct statement.

ALBERT WIXON,

Mate Schooner "Eliza."

Sworn to before me this 20th November, 1884.

[SEAL.]

GEO. E. RICE,

U. S. Vice Consul-General, Kanagawa, Japan.

[ENCLOSURE 3 IN MR. RICE'S NO. 879.]

Ship's papers of the "Eliza."

[1. BILL OF SALE.]

YOKOHAMA, May 4, 1882.

By order of H. I. Russian Majesty's Court at Kanagawa, was sold at public auction on the 2d day of May, 1882, the schooner "Kiwa Elizabeth" to foreclose a mortgage held by F. C. Spooner on said vessel. The said vessel was sold to said Spooner for the sum of three thousand and six hundred dollars (\$3,600⁰⁰/₁₀₀), the acknowledgement of payment of said sum constituting a bill of sale for the said schooner. N. 86.

[SEAL.]

A. PELIKAN,

H. I. M's Consul.

[2. CERTIFICATE OF AMERICAN OWNERSHIP.]

Certificate to be issued to citizens of the United States, being purchasers of American or foreign-built vessels in a foreign port.

I, Thos. B. Van Buren, Consul-General of the United States, for the port of Kanagawa, Japan, do hereby certify that the within bill of sale, bearing date the fourth day of May, 1882, of the schooner "Eliza", formerly called the "Kiwa Elizabeth". Tonnage, 113 tons; length, over all, 74, feet; breadth, 20 feet; depth, 8 feet; masts, 2; decks, 1; frame, wood and iron fastened; stem, elliptic. Sold and transferred by A. Pelikan, Russian Consul, to F. C. Spooner, under foreclosure of mortgage, has been proved satisfactorily to me to have been duly executed by the subscribing party; and I further certify the F. C. Spooner therein mentioned as purchaser of said vessel is a citizen of the United States. As witness my hand and the seal of the Consulate-General, this thirty-first day of May, in the year of our Lord 1882.

[SEAL.]

THOS. B. VAN BUREN,

Consul-General.

[3. CERTIFICATE OF CHANGE OF NAME OF SCHOONER FROM "KIWA ELIZABETH" TO "ELIZA".]

To all whom it may concern: Whereas I, Frank C. Spooner, of Yokohama, in the Empire of Japan, am the sole owner of the schooner called the "Kiwa Elizabeth," of Yokohama, aforesaid; and whereas it is my desire and intention to change the name of said schooner: Now, therefore, by these presents be it known that from and after the date hereof, said schooner will be known as and called the "Eliza," of Yokohama.

Witness my hand and seal at Yokohama this thirty-first day of May, in the year one thousand and eight hundred and eighty-two.

[SEAL.]

F. C. SPOONER.

By his attorney: CHAS. WIGGINS.

Signed and sealed in } GEO. E. RICE.
the presence of } H. S. VAN BUREN.

U. S. CONSULATE-GENERAL, KANAGAWA, JAPAN.

On this thirty-first day of May, in the year one thousand eight hundred and eighty-two, personally appeared before me Charles Wiggins, known to me to be the attorney for F. C. Spooner, and who executed the foregoing instrument, and who acknowledged to me that he executed the same for the purposes therein set forth.

Witness my hand and official notarial seal at the place and time last above written.

[SEAL.]

THOS. B. VAN BUREN,

Consul-General.

Recorded in Record-Book D of the U. S. Consulate-General at Kanagawa, Japan, this 31st May, 1882, at 11 a. m.

[4. CERTIFICATE OF CLEARANCE OF "ELIZA."]

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,

March 21st, 1884.

I, the undersigned, Deputy Consul General of the United States of America for Kanagawa, Japan, and the dependencies thereof, do hereby certify that A. Weston, master of the schooner called the "Eliza," of Yokohama, having this day exhibited to me the clearance of said schooner from the proper authorities of this port, I have delivered to him, the said master, the Bill of Sale and Papers of the said schooner, duly deposited in this Consulate General on the 6th day of November, 1883.

Given under my hand and the seal of this Consulate General the day and year above written.

GEO. E. RICE,

U. S. Deputy Consul General.

[SEAL.]

U. S. CONSULATE GENERAL,

KANAGAWA, JAPAN.

I, Vice Consul General of the United States at Kanagawa, Japan, do hereby certify that the foregoing Bill of Sale from His Imperial Russian Majesty's Consul to F. C. Spooner; certificate by the United States Consul General of American ownership, and certificate of change of name; also certificate of clearance, constituting the papers of the schooner "Eliza," of Yokohama, are true and correct copies of the original of same, of record in this consulate.

Witness my hand and seal of office this ninth day of February, A. D., 1885.

GEO. E. RICE,

Vice Consul General.

[SEAL.]

No. 65.

Mr. Bayard to Mr. Wurts.

[No. 50.]

DEPARTMENT OF STATE,

WASHINGTON, June 28, 1886.

SIR:

I have to call the attention of your legation to the instruction of March 25, 1885, to Mr. Taft in regard to the seizure of the schooner "Eliza" by the Russian cruiser "Razboinik," July 21, 1884. No answer seems to have been made to that instruction.

Mr. Cummings, the attorney of the claimant, has recently inquired as to the action of the legation in the premises.

I am, &c.,

T. F. BAYARD.

No. 66.

Mr. Bayard to Mr. Lothrop.

[No. 65.]

DEPARTMENT OF STATE,

WASHINGTON, December 4, 1886.

SIR:

I transmit a copy of a despatch from the United States consul at Nagasaki, relating indirectly to the seizure and confiscation of the American schooner "Henrietta" by the Russian corvette "Kreysser," in Behring

Strait, off East Cape, August 29 last, for fishing and trading in Russian waters. You will please apply, with due urgency, to the Emperor's government for the facts and an explanation of its claim. Opinion as to the merits of the question is for the time reserved.

I am, &c.,

T. F. BAYARD.

[ENCLOSURE IN MR. BAYARD'S No. 65.]

Mr. Birch to Mr. Porter.

[No. 44.]

UNITED STATES CONSULATE,
NAGASAKI, Japan, October 18, 1886. [Rec'd Nov. 23.]

SIR:

I have the honor to inform you that five destitute seamen, named Charles Blois, Charles Giles, Thomas Greenfell, James Hurley, and Frederick Nelson, came upon this consulate to-day from Vladivostok.

These men were part of the crew of the schooner "Henrietta," of San Francisco, Benjamin Dexter master, and James Sennett owner, which was seized and confiscated by the Russian corvette "Kreysser," in Behring Strait, off East Cape, August 29th, 1886, for fishing and trading in Russian waters.

I learn that the vessel and cargo confiscated amounted in value to about \$25,000.

I enclose a copy of the letter sent by the captain of the corvette "Kreysser" to this consulate. I have forwarded the seamen to Yokohama, where they may find employment on board an American vessel or a passage to the United States more likely than at this port.

I have, &c.,

JOHN M. BIRCH.

U. S. Consul.

[ENCLOSURE IN MR. BIRCH'S No. 44.]

Letter of Captain Ostolopoff.

I hereby certify that the undermentioned five men are American citizens, taken from the schooner "Henrietta," confiscated by the Russian corvette "Kreysser," in the Behring Strait. They are not guilty in any violation of the Russian law, and are therefore sent to the disposition of the American consul at Nagasaki: Charles Blois, Charles Giles, Thomas Greenfell, James Hurley, Frederick Nelson.

Captain of H. I. R. M's corvette "Kreysser,"

[SEAL.]

A. OSTOLOPOFF.

1st October, 1886. VLADIVOSTOK.

No. 67.

Mr. Lothrop to Mr. Bayard.

[No. 95.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, February 17, 1887. (Received March 7.)

SIR:

In compliance with the instructions of your despatch No. 65, of December 4th last, I addressed a note on December 22nd to the Imperial Minister for Foreign Affairs, asking for the facts and grounds on which the American schooner "Henrietta" was seized and confiscated off East Cape, in Behring's Straits, on August 24th last.

On January 21st last I received a reply, a translation of which I enclose herewith, stating that the "Henrietta" was confiscated by the judgment of a commission, sitting on board the Imperial corvette "Kreysser," for the offence of illicit trading on the Russian coasts.

On January 24th I had a personal interview with Gen. Vlangaly, the Assistant Minister of Foreign Affairs in which I asked him how the commission that sat on board the corvette was constituted. He informed me that it was composed of certain officers of the corvette, acting under the orders of the Government of Eastern Siberia, within whose general jurisdiction such matters were vested.

I also called his attention to the fact that his note to me failed to specify in what the "illicit commerce" consisted, and asked him for further information. He replied that he was not then able to give me the desired information, but said an answer in respect to the seizure and condemnation of the American schooner "Eliza" was in preparation and would be sent to me in a few days, and he thought that perhaps I might thereby receive the information sought.

On February 1st I received the promised communication, respecting the "Eliza," a copy of which will accompany the despatch which will immediately follow the present one.

It will be seen that the seizure and condemnation of the schooners rest on the provisions of an administrative order—"d'un disposition administrative"—prohibiting, after the first of the year 1882, all trading, hunting, and fishing on the Russian Pacific coasts, without special license from the Governor General.

It is claimed that very extensive publicity of this regulation was given in 1881-1883 through the newspapers of Yokohama, in the Russian Consulates of the Pacific, and at the American custom houses.*

Upon the receipt of this last note, I at once, for greater celerity, wrote to Gen. Vlangaly asking him for a copy of the trading regulation or order.

I also asked if I was right in my understanding that the commission was composed of the officers of the vessel that made the capture.

I supposed this last note would be answered at once, but as it has not been, I have concluded not to wait any longer before reporting the cases to you.

The feature that strikes me as very peculiar in these cases is the fact that the captors are also the judges of their own acts. The commission seems to sit at once at the place of capture, and the evidence on which it acts would seem to be that which the captors derive from their own observation on the spot. It is perhaps a fundamental and equitable maxim of jurisprudence that no one can be a judge of his own cause; and it will probably be worthy of consideration how far the decisions of a tribunal so constituted can be considered as valid.

I am, &c.,

GEO. V. N. LOTHROP.

* For this notice see For. Rel., 1882, p. 448; and *supra*, p. 106.

[ENCLOSURE IN MR. LOTHROP'S NO. 95.]

General Vlangaly to Mr. Lothrop.

[TRANSLATION.]

[No. 79.]

MINISTRY OF FOREIGN AFFAIRS,
ASIATIC DEPARTMENT, *January 26, 1887.*

MR. ENVOY:

In consequence of the note addressed by you to me on the 10th (22d) of December, I hastened to ask information of the Maritime Province by telegraph, in regard to the seizure of the "Henrietta."

I have now the honor to bring to your knowledge that, according to the information communicated to me by General Enghelm, acting governor of said province, the "Henrietta" was in fact seized and confiscated on the 17th (29th) of August in virtue of a decision of the Commission sitting on board of the Imperial corvette "Kreysser" for the offense of illicit trading on our coasts.

Pray accept, &c.,

A. VLANGALY.

No. 68.

Mr. Lothrop to Mr. Bayard.

[No. 96.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, *February 17, 1887.* (Rec'd March 7.)

SIR:

I have the honor to transmit to you a copy, with translation, of a communication received from the Imperial Foreign Office on February 1st instant, relative to the seizure of the schooner "Eliza."

The Russian government claims that she was seized and condemned under the provisions of an order, or regulation, which took effect at the beginning of 1882, and which absolutely prohibited every kind of trading, hunting, and fishing on the Russian Pacific coasts without a special license from the Governor-General.

It is not claimed that the "Eliza" was engaged in seal fishing, but that she was found actually engaged in trading with the natives with the contraband articles of arms and strong liquors.

She was condemned by a commission sitting on the Imperial corvette "Rasboinik," composed of the officers thereof. In this respect the case is precisely like that of the "Henrietta," mentioned in my last preceding despatch, No. 95, and of this date.

It will be noticed that Mr. Spooner, the owner of the "Eliza," in his statement of his claim, declares that the "Eliza" was "on a trading voyage, engaged in bartering with the natives, and catching walrus, and as such did not come under the notice of the Russian government, which was directed against the capture of seals on Copper, Robbins, and Behring Island."

It will be seen that Mr. Spooner either refers to an order of the Russian

government different from the one mentioned by the Imperial Foreign Office, or he understood the latter in a very different sense.

I may add that the Russian Code of Prize Law of 1869, Art. 21, and now in force, limits the jurisdictional waters of Russia to three miles from the shore.

As stated in my previous despatch, I have asked for a copy of the order or regulation under which the "Henrietta" and "Eliza" were seized and condemned.

Very truly, &c.,

GEO. V. N. LOTHROP.

[ENCLOSURE IN MR. LOTHROP'S No. 96.]

General Vlangaly to Mr. Lothrop.

[TRANSLATION.]

[No. 233.]

MINISTRY OF FOREIGN AFFAIRS,
ASIATIC DEPARTMENT, January $\frac{1}{2}$, 1887.

MR. ENVOY:

The Chief of the General Staff of the Navy has just transmitted to me the information which I had requested from that Department in consequence of the note that you addressed to me bearing date of July $\frac{5}{17}$, 1886, in regard to the incident of the seizure of the schooner "Eliza."

This information is in substance to the effect that the "Eliza" was confiscated not for the fact of seal hunting, but by virtue of an administrative regulation prohibiting, from the beginning of the year 1882, every kind of commercial act, of hunting, and of fishing on our coasts of the Pacific, without a special authorization from the Governor-General, and carrying with it, against those disregarding it, the penalty of the seizure of the ship as well as of the cargo.

During the years 1881-1883, the widest means of publicity were employed in bringing this regulation to the knowledge of the parties interested; it was published in the journals of Yokohama, posted up in all our consulates of the Pacific, and communicated to the American custom house establishments.

The complainant cannot, therefore, plead ignorance of the prohibitory measures in question.

The crew of the "Eliza" was engaged not only in hunting walrus on our coasts of Kamtschatka, and in commercial transactions with the natives, but traded there with illicit articles, such as arms and strong liquors.

The infringements of the printed regulation are duly established by the open act and the confession of the Captain, Austin Weston, who made no protest against the seizure of the vessel ordered under that head by the Commission sitting *ad hoc* on board the Imperial Corvette "Rasboïnik."

The Captain and his second officer, besides acknowledge the offence charged against them of hunting and of trading, in their depositions annexed to the petition itself of Mr. Spooner, and communicated to the Imperial Ministry by the Legation of the United States, under date of April $\frac{1}{2}$.

In informing you of the foregoing circumstances, which demonstrate the entire legitimacy of the seizure of the "Eliza," I have no doubt, Mr. Envoy, that you will be led to conclude that the claim brought by the proprietor of that ship is without foundation,

And I avail myself, &c.,

A. VLANGALY.

No. 69.

Mr. Lothrop to Mr. Bayard.

[No. 100.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, *March 7, 1887.* (Received March 22.)

SIR:

Referring to my recent despatches, Nos. 95 and 96, concerning the seizure and confiscation of the schooners "Eliza" and "Henrietta," I am now able to report that the Minister of Foreign Affairs, in answer to my inquiries, informs me explicitly that the "illicit commerce" imputed to the "Henrietta," was commerce in violation of the order, or "*disposition administrative*" set forth in my aforesaid despatches. He further states that the commission that condemned the schooners was in each case, made up of officers belonging to the capturing vessel.

He has also sent to me a translation into English of said "*disposition administrative*," a copy of which I enclose herewith. It will be noticed that it appears in the form of the notice which was given by the Russian Consul at Yokohama November 15, 1881.

I remain, &c.,

GEO. V. N. LOTHROP.

[ENCLOSURE IN MR. LOTHROP'S NO. 100.]

Notice of order relative to commerce on Russian Pacific Coast.

[TRANSLATION.]

NOTICE.—At the request of the local authorities of Behring and other islands, the undersigned hereby notifies that the Russian Imperial Government publishes, for general knowledge, the following:

1. Without a special permit or license from the Governor General of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, etc., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the northeastern coast of Asia, or within their sea boundary line.
2. For such permits or licenses, foreign vessels should apply to Vladivostok exclusively.
3. In the port of Petropaulovst, though being the only port of entry in Kamtchatka, such permits or licenses shall not be issued.
4. No permits or licenses whatever shall be issued for hunting, fishing or trading at or on the Commodore or Robben islands.
5. Foreign vessels found trading, fishing, hunting, etc., in Russian waters without a license or permit from the Governor General, and also those possessing a license or permit who may infringe the existing by-laws on hunting, shall be confiscated, both vessels and cargoes, for the benefit of the Government. This enactment shall be enforced henceforth, commencing with A. D., 1882.
6. The enforcement of the above will be entrusted to Russian men-of-war, and also to Russian merchant vessels, which, for that purpose, will carry military detachments and be provided with proper instructions.

PELIKAN,

*His Imperial Russian Majesty's Consul.*YOKOHAMA, *November 15, 1881.*

No. 70.

Mr. Bayard to Mr. Lothrop.

[No. 74.]

DEPARTMENT OF STATE,

WASHINGTON, March 16, 1887.

SIR:

I have received your No. 96, of the 17th February, relative to the seizure of the American schooner "Eliza," July 21, 1884, which formed the subject of instruction No. 50, of June 28, 1886.

The instruction which I send you to-day, relative to the seizure of the "Henrietta" is applicable to this case also.

You are requested to forward a translation of Article 21 of the Russian code of Prize Law of 1869, to which you refer as limiting the jurisdictional waters of Russia to three miles from the shore.

I am, &c.,

T. F. BAYARD.

No. 71.

Mr. Bayard to Mr. Lothrop.

[No. 75.]

DEPARTMENT OF STATE,

WASHINGTON, March 16, 1887.

SIR:

I have received your No. 95 of the 17th ultimo, in answer to instruction No. 65, concerning the grounds for seizure and confiscation on 24th August, 1886, of the American schooner "Henrietta" by the Russian authorities.

If, as I am to conclude from your despatch, the seizure of the "Henrietta" was made in Russian territorial waters, then the Russian authorities had jurisdiction; and if the condemnation was on proceedings duly instituted and administered before a competent court and on adequate evidence, this Department has no right to complain. But if either of these conditions does not exist, the condemnation cannot be internationally sustained. The first of these conditions, viz, that the proceedings should have been duly instituted and administered, could not be held to exist if it should appear that the court before whom the proceedings were had, was composed of parties interested in the seizure. On general principles of international law, to enforce a condemnation by such a court, is a denial and perversion of justice for which this Government is entitled to claim redress.

The same right to redress, also, would arise, if it should appear that while the seizure was within the three-mile zone, the alleged offense was committed exterior to that zone and on the high seas.

You are, therefore, instructed to enquire not merely as to the mode in which the condemning court was constituted, but as to the evidence adduced before such court, in which the exact locality of seizure should be included.

I am, &c.,

T. F. BAYARD.

No. 72.

Mr. Lothrop to Mr. Bayard.

[No. 126.]

LEGATION OF THE UNITED STATES,
ST. PETERSBURG, June 22, 1887. (Received July 9.)

SIR:

In answer to my note of April 11th last, asking for information as to the precise places of seizure of the schooners "Eliza" and "Henrietta" severally, and also for copies of the minutes or records of the courts that condemned the said schooners, including the charges, evidence, and other proceedings, I have now received from the Imperial Government copies of the "Protocols" in each of said cases.

It will be seen that the tribunal that confiscated the schooner was made up of the officers of the capturing vessel and that the evidence on which they claim to have acted was furnished by their own observation, the papers, or want of papers, of the schooners, and the admissions of their masters.

I enclose the copies furnished to me, with translations of the same.

I am, &c.,

GEO. V. N, LOTHROP.

[ENCLOSURE 1 IN MR. LOTHROP'S NO. 126.]

Protocol of Proceedings in the Case of the "Henrietta."

[TRANSLATION.]

We, the undersigned, do certify, that the 17th August, 1886, in the Behring Sea, latitude 65° 55' N., and longitude 190° 4' E., was met a two-masted schooner, carrying the American flag.

Upon examination of her, as also her documents, it was found that this schooner belonged to the town of San Francisco, was the property of James Sennett, was called the "Henrietta," under the command of Benjamin Defer; was going from the region of the territorial waters to Cape Chaplin, part of the Russian Possessions. On the schooner besides the crew were six Chukthees, from Cape Chaplin. According to the journal and as acknowledged by the commander it is seen that the schooner "Henrietta" was engaged in trading, without license, on the Russian coast, viz., in the Bay of St. Lavrentia, Providence, and at Capes Chaplin and Eastern; besides this upon examination of the schooner there was found on board about one pood (36 lbs.) of gunpowder, two guns, more than two thousand cartridges of different kinds, lead one pood 10 lbs., small shot and percussion caps. The cargo did not correspond with the bill of lading, the journal was not written up properly, and the last days had not been entered at all.

Length of the schooner, 51 feet; breadth of the schooner, 20 feet; water displacement, 44 tons.

The cargo consisted of 4,000 lbs. of whalebone, three barrels of walrus tusks, furs, and various small articles; taking into consideration all the foregoing we have decided to confiscate the schooner to the benefit of the Russian government, August 15th, 1886.

Personally signed.

President of the committee:

CAPTAIN OF THE 2D RANK, PLAKSIN.

Members of the committee:

LIEUTENANT POPOFF.

PORUCHICK ZEIN.

UNDER LIEUTENANT FEDOTOFF.

UNDER LIEUTENANT KOROBCHIK.

Confirmed:

Commander of the clipper "Cruiser."

CAPTAIN 1ST RANK, OSTOLOPOFF.

Compared with the original. Senior Flag Officer:

LIEUTENANT RODIONOFF.

Correct:

SECRETARY MIDSHIPMAN SCHVANK.

[ENCLOSURE 2 IN MR. LOTHROP'S NO. 126.]

[TRANSLATION.]

Protocol of the confiscation, at the mouth of the river Anadyr, near Cape Observatory, of the American schooner "Eliza."

The 14th June, 1884, at the mouth of the river Anadyr, near Cape Observatory, Lieutenant Parenoff, of the Imperial clipper "Razboïnik," under the command of Lieutenant Hildebrandt, inspected the American schooner at anchor "Eliza," Captain Austin Weston, upon which was found in the hold unlawful merchandise, such as rum, fire-arms, &c. Amongst the ship's papers was not found any bill of lading or port clearancy. As seen by the ship's journal and acknowledged by the Captain, the above named schooner carried on trade with strangers in different parts of the Russian Northwest Coast, without having any license for this from the Governor of Eastern Siberia, and, besides this, trading in prohibited goods; therefore, by order of the Government, published in the English language three years ago and instructions given, I order:

(1) The above named schooner "Eliza," with all that belongs to her and her cargo, to be confiscated at once, to the benefit of the Russian Imperial Government.

(2) The Captain and part of the ship's crew of the schooner to be taken on board the clipper, as passengers, with their personal effects belonging to them, until the first meeting with a commercial vessel having lawful rights or until they arrive at one of the ports having postal communication.

(3) The confiscated schooner to be sent to Vladivostok for delivery to the port, and

(4) To hand the Captain, Austin Weston, a copy of this protocol, in the English language, and to get a receipt from him for the same.

Commander of the clipper "Razboïnik,"

LIEUTENANT CAPTAIN HILDEBRANDT
and LIEUTENANT PARENOFF.

Confirmed:

REVISOR YOUNG.

Correct:

SECRETARY MIDSHIPMAN SCHVANK.

PART V.

The following correspondence shows the position assumed in 1872 by the Treasury Department in relation to the extent of jurisdiction of the United States in Alaskan waters.

No. 73.

Mr. Phelps to Mr. Boutwell.

CUSTOMS-HOUSE, SAN FRANCISCO,
Collector's Office, March 25, 1872.

SIR:

I deem it proper to call the attention of the Department to certain rumors, which appear to be well authenticated, the substance of which appears in the printed slip taken from the *Daily Chronicle* of this date, herewith inclosed.

In addition to the several schemes mentioned in this paper, information has come to this office of another, which is being organized at the Hawaiian Islands for the same purpose. It is well known that during the month of May and the early part of June in each year the fur-seal, in their migration from the southward to Saint Paul and Saint George Islands, uniformly move through Ounimak Pass in large numbers, and also through the narrow straits near that pass which separate several small islands from the Aleutian group.

The object of these several expeditions is unquestionably to intercept the fur-seals at these narrow passages during the period above mentioned, and there, by means of small boats manned by skillful Indians or Aleutian hunters, make indiscriminate slaughter of those animals in the water, after the manner of hunting sea-otters.

The evil to be apprehended from such proceedings is not so much in respect of the loss resulting from the destruction of the seals at those places (although the killing of each female is in effect the destruction of two seals), but the danger lies in diverting these animals from their accustomed course to the islands of Saint Paul and Saint George, their only haunts in the United States.

It is believed by those who have made the peculiar nature and habits of these animals a study, that if they are by any means seriously diverted from the line upon which they have been accustomed to move northward in their passage to these islands, there is great danger of their seeking other haunts, and should this occur the natural selection would be Komandorsky Islands, which lie just opposite the Pribolof group, near the coast of Kamtschatka, owned by Russia, and are now the haunt of fur-seals.

That the successful prosecution of the above-mentioned schemes would have the effect to drive the seals from their accustomed course there can be no doubt. Considering, therefore, alone the danger which is here threatened to the interest of the Government in the seal-fisheries, and the large annual revenue derived from the same, I have the honor to suggest, for the consideration of the honorable Secretary of the Treasury, the question whether the act of July 1, 1870, relating to those fisheries, does not authorize his interference by means of revenue-cutters to prevent foreigners and others from doing such an irreparable mischief to this valuable interest. Should the honorable Secretary deem it expedient to send a cutter into these waters, I would respectfully suggest that a steam-cutter would be able to render the most efficient service, and that it should be in the region of Ounimak Pass and Saint Paul and Saint George Islands by the 15th of May next.

I am, very respectfully,

T. G. PHELPS,
Collector.

From San Francisco "Daily Chronicle," March 21, 1872.

It is stated in reliable commercial circles that parties in Australia are preparing to fit out an expedition for the capture of fur-seals in Behring Sea. The present high prices of fur-seal furs in London and the European markets has acted powerfully in stimulating enterprises of a like character. But a few days ago we mentioned that a Victoria company was organized for catching fur-seals in the North Pacific. Another party, an agent representing some eastern capitalists, has been in this city for the past week, making inquiries as to the feasibility of organizing an expedition for like purposes.

No. 74.

Mr. Boutwell to Mr. Phelps.

TREASURY DEPARTMENT,

WASHINGTON, D. C., *April 19, 1872.*

SIR:

Your letter of the 25th ultimo was duly received, calling the attention of the Department to certain rumors circulating in San Francisco, to the effect that expeditions are to start from Australia and the Hawaiian Islands to take fur-seals on their annual migration to the islands of Saint Paul and Saint George through the narrow pass of Unmak. You recommend, to cut off the possibility of evil resulting to the interests of the United States from these expeditions, that a revenue-cutter be sent to the region of Unmak Pass by the 15th of May next.

A very full conversation was had with Captain Bryant upon this subject while he was at the Department, and he conceived it to be entirely impracticable to make such an expedition a paying one, inasmuch as the seals go singly or in pairs, and not in droves, and cover a large region of water in their homeward travel to these islands, and he did not seem to fear that the seals would be driven from their accustomed resorts, even were such attempts made.

In addition, I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore.

As at present advised, I do not think it expedient to carry out your suggestions, but I will thank you to communicate to the Department any further facts or information you may be able to gather upon the subject.

I am, very respectfully,

GEO. S. BOUTWELL,

Secretary.

PART VI.

It is to be observed that under Article VI of the convention of 1825 between Great Britain and Russia (*supra*, p. 64), British subjects have the right of access to, and free navigation of the Yukon River. On this question the following is quoted from Mr. Sumner's speech in the Senate, April 9, 1867:*

Questions arising under the treaty of 1867.

There are questions, not unworthy of attention, which arise under the treaty between Russia and Great Britain, fixing the eastern limits of these possessions, and conceding certain privileges to the latter power. By this treaty, signed at St. Petersburg, 28th February, 1825, after fixing the boundaries between the Russian and British possessions, it is provided that "for the space of *ten years* from the signature of the present convention, the vessels of the two powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens and creeks on the coast, for the purposes of fishing and of trading with the natives"; and also that "the port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of *ten years* from the date of the exchange of the ratifications of the present convention." In the same treaty it is also provided that "the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall *forever* enjoy the right of navigating freely and without any hindrance whatever all the rivers and streams which in their course towards the Pacific Ocean may cross the line of demarcation." Afterwards a treaty of commerce and navigation between Russia and Great Britain was signed at St. Petersburg, 11th January, 1843, subject to be terminated on notice from either party at the expiration of ten years, in which it is provided, that, "in regard to commerce and navigation in the Russian possessions on the northwest coast of America, the convention concluded at St. Petersburg on the 1st February, 1825, continues in force." Then ensued the Crimean War between Russia and Great Britain, effacing or suspending treaties. Afterwards another treaty of commerce and navigation was signed at St. Petersburg, 12th January, 1859, subject to be terminated on notice from either party at the expiration of ten years, which repeats the last provision.

Thus we have three different stipulations on the part of Russia, one opening seas, gulfs, and havens on the Russian coast to British subjects for fishing

*Works, vol. xi, page 212 *et seq.*

and trading with the natives; the second making Sitka a free port to British subjects; and the third making British rivers which flow through the Russian possessions forever free to British navigation. Do the United States succeed to these stipulations?

Among those I make a distinction in favor of the last, which by its language is declared to be "forever," and may have been in the nature of an equivalent at the settlement of boundaries between the two powers. But whatever its terms or its origin, it is obvious that it is nothing but a declaration of public law, as always expounded by the United States, and now recognized on the continent of Europe. While pleading with Great Britain in 1826 for the free navigation of the St. Lawrence, Mr. Clay, then Secretary of State, said that "the American government did not mean to contend for any principle the benefit of which in analogous circumstances it would deny to Great Britain." During the same year, Mr. Gallatin, our minister in London, when negotiating with Great Britain for the adjustment of boundaries on the Pacific, proposed that, "if the line should cross any of the branches of the Columbia at points from which they are navigable by boats to the main stream, the navigation of such branches and of the main stream should be perpetually free and common to the people of both nations." At an earlier day the United States made the same claim with regard to the Mississippi, and asserted, as a general principle, that, "if the right of the upper inhabitants to descend the stream was in any case obstructed, it was an act of force by a stronger society against a weaker, condemned by the judgment of mankind." By these admissions our country is estopped, even if the public law of the European continent, first declared at Vienna with regard to the Rhine, did not offer an example which we cannot afford to reject. I rejoice to believe that on this occasion we apply to Great Britain the generous rule which from the beginning we have claimed for ourselves.

The two other stipulations are different in character. They are not declared to be "forever," and do not stand on any principle of public law. Even if subsisting now, they cannot be onerous. I doubt much if they are subsisting now. In succeeding to the Russian possessions, it does not follow that the United States succeed to ancient obligations assumed by Russia, as if, according to a phrase of the Common Law, they were "covenants running with the land." If these stipulations are, in the nature of *servitudes*, they depend for their duration on the sovereignty of Russia, and are *personal* or *national* rather than *territorial*. So, at least, I am inclined to believe. But it is hardly profitable to speculate on a point of so little practical value. Even if "running with the land," these servitudes can be terminated at the expiration of ten years from the last treaty by notice, which equitably the United States may give, so as to take effect on the 12th of January, 1869. Meanwhile, during this brief period, it will be easy by Act of Congress in advance to limit importations at Sitka, so that this "free port" shall not be made the channel or doorway by which British goods are introduced into the United States free of duty.

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